


A LETTER  
TO  
ADWALLADER  
D. GOLDEN



DUER



1817











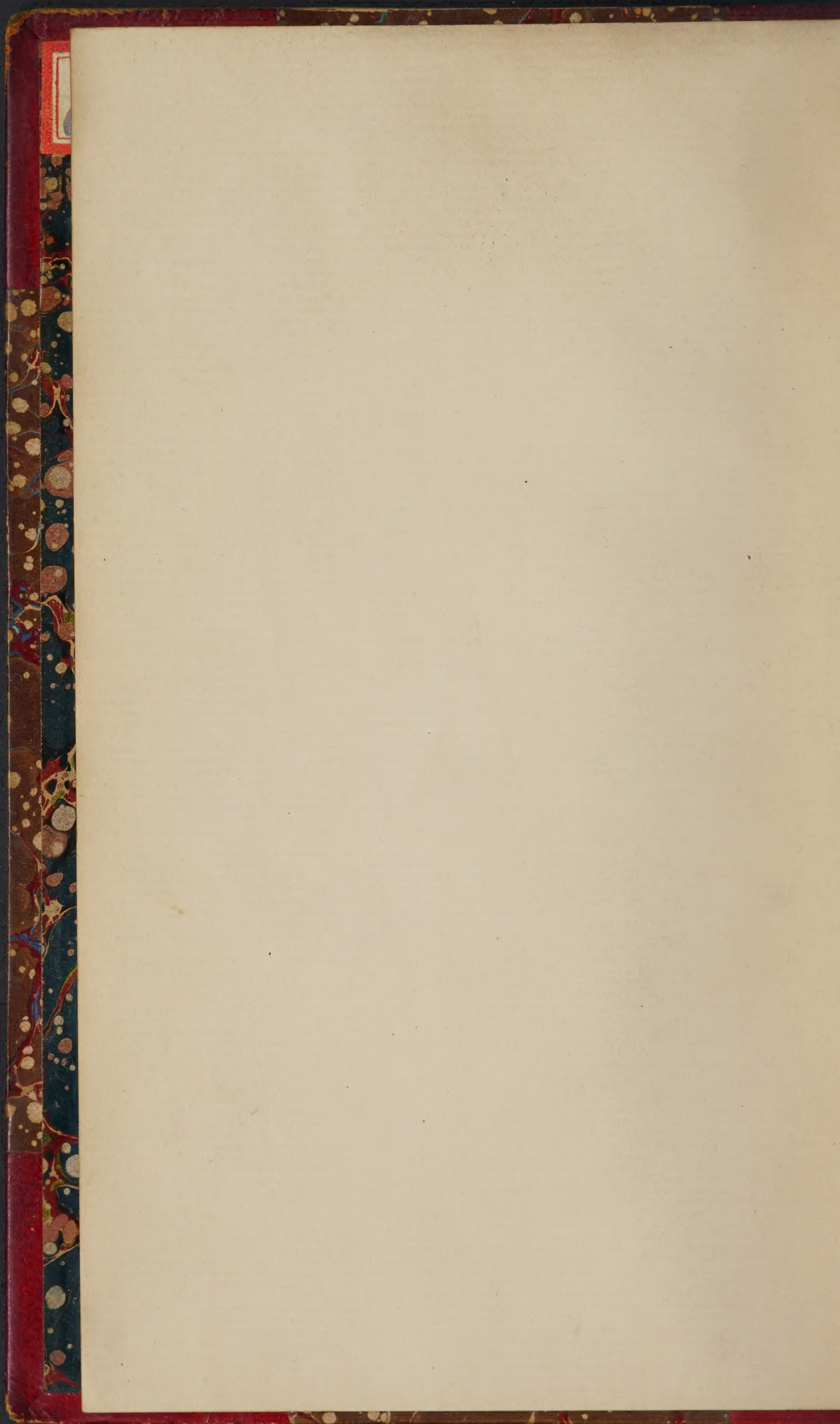
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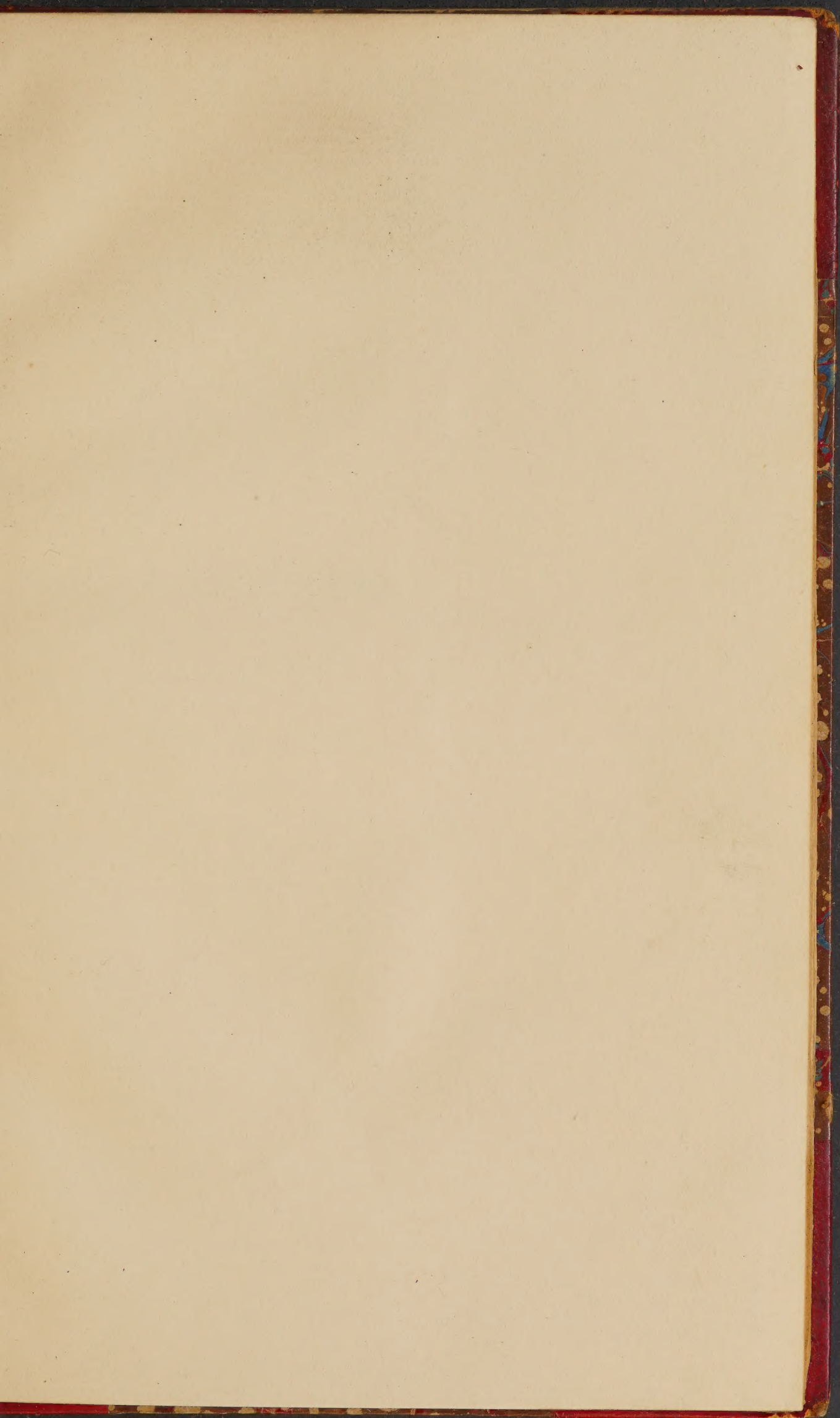




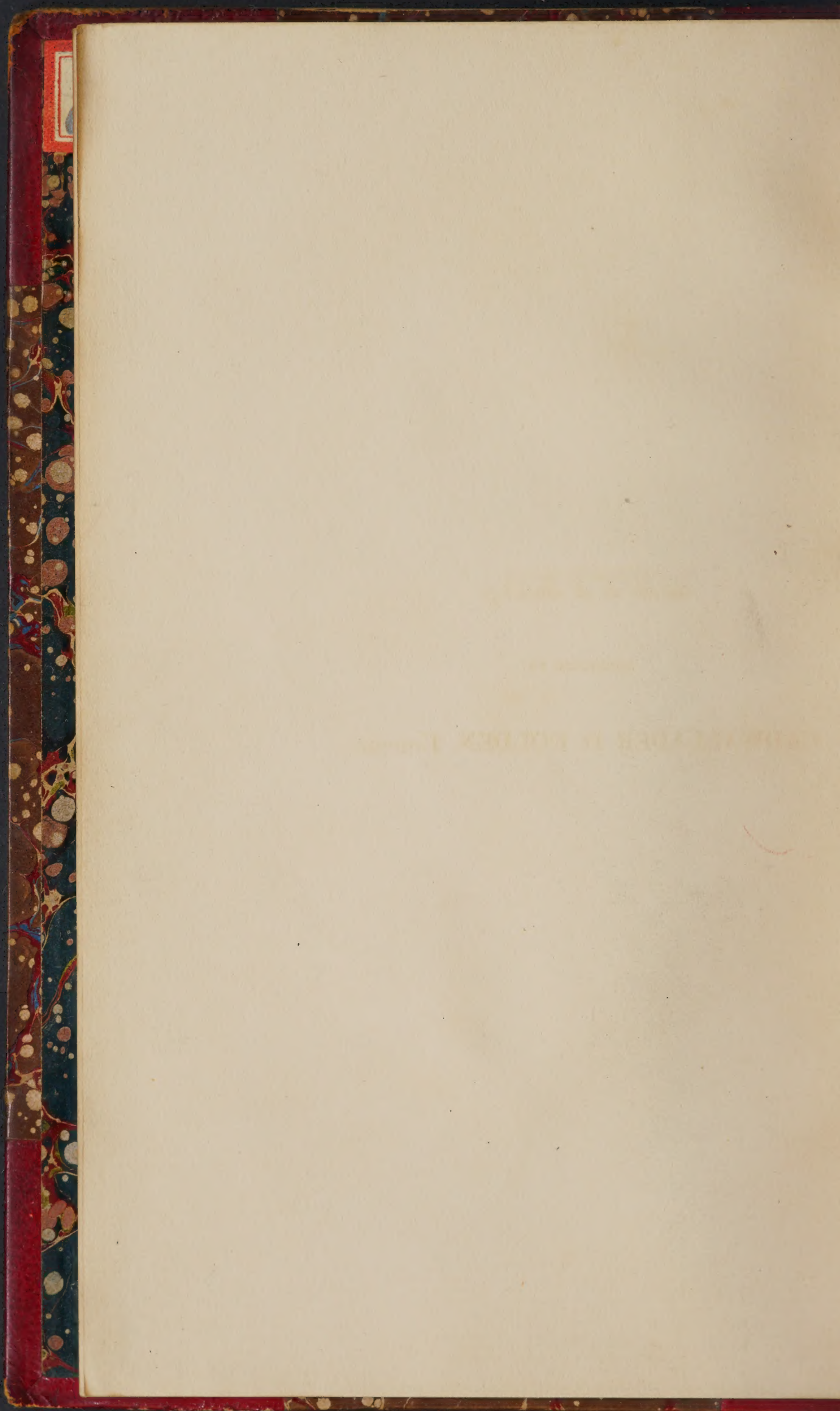














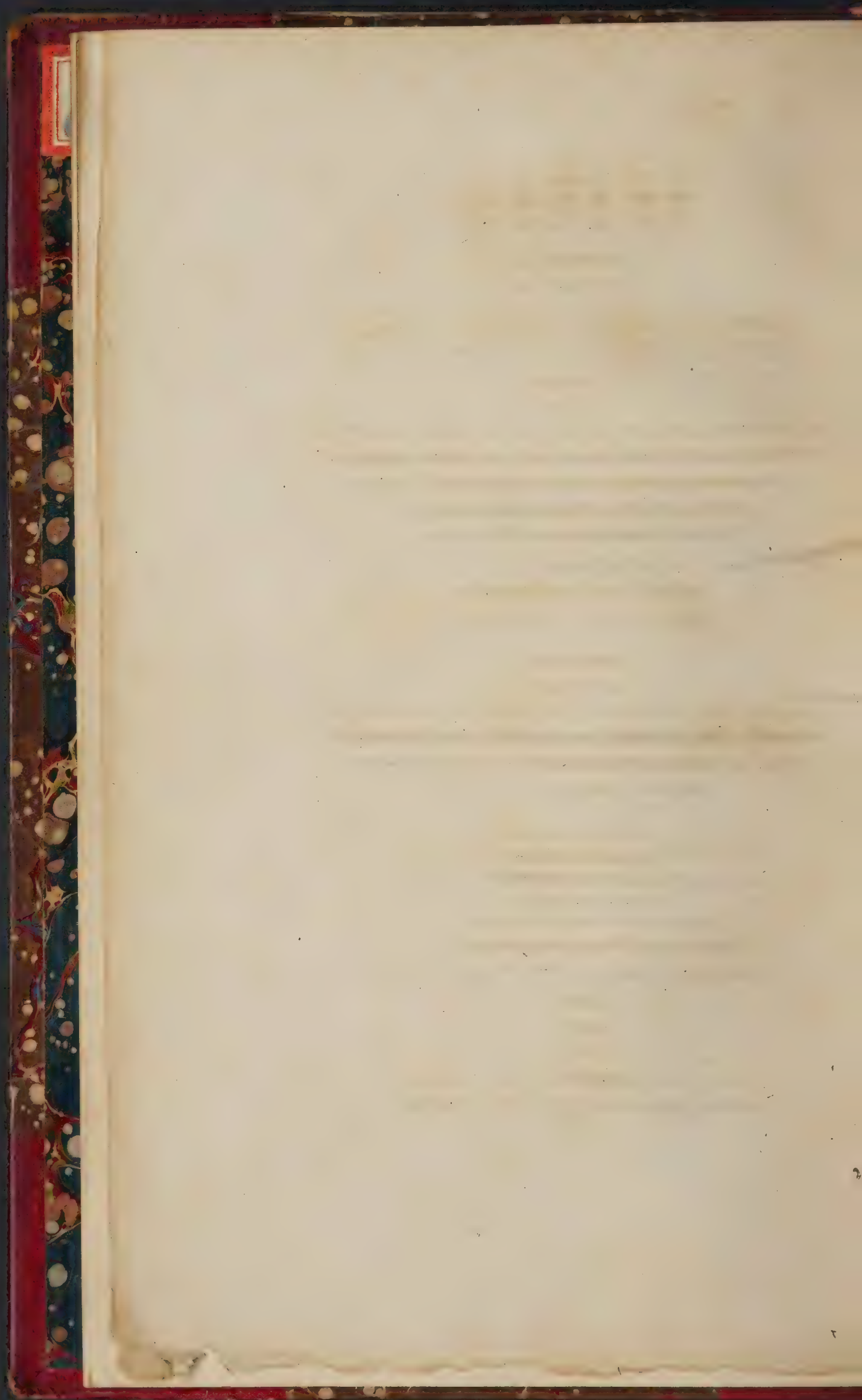
A

**LETTER,**

ADDRESSED TO

**CADWALLADER D. COLDEN, Esquire.**







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A

# LETTER,

ADDRESSED TO

CADWALLADER D. COLDEN, Esquire.

IN ANSWER

TO THE STRICTURES, CONTAINED IN HIS "LIFE OF ROBERT FULTON," UPON  
THE REPORT OF THE SELECT COMMITTEE, TO WHOM WAS REFERRED  
A MEMORIAL RELATIVE TO STEAM NAVIGATION, PRE-  
SENTED TO THE LEGISLATURE OF NEW-YORK,  
AT THE SESSION OF 1814.

WITH AN APPENDIX,

CONTAINING

THE SEVERAL LAWS CONCERNING STEAM BOATS; THE PETITIONS PRE-  
SENTED FOR THEIR MODIFICATION; AND THE REPORTS OF SELECT  
COMMITTEES THEREUPON, &c. &c. &c.

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By WILLIAM ALEXANDER DUER, Esquire.

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—nunquamne reponam,  
Vexatus toties? —

JUV.

—♦—

ALBANY:

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1817.

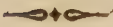






# A LETTER,

&c. &c.



TO CADWALLADER D. COLDEN, Esq.

SIR,

AN indispensable professional engagement of peculiar interest and importance, occupied so exclusively my attention, during the past summer, that I was prevented from perusing your biographical memoir of the late Mr. Fulton, for some weeks after its publication. But as soon as I had closed the volume, I resolved to address to you, through the medium of the press, a dispassionate remonstrance upon that part of your performance, which, from my peculiar share in the recommendation and support of the measures you there condemn, it seemed incumbent on me to answer.

You will readily apprehend, Sir, that I allude to your observations upon the report of a select committee of the assembly, to whom had been referred the memorial of Colonel Aaron Ogden, of New-Jersey, at the session of 1814. Of that committee I had the honour to be chairman ; and I presume you will neither be surprised, nor irritated, by this attempt to explain, and vindicate their report, in the same public manner in which you have arraigned it.

The charges to which I have more immediate reference, are preferred or insinuated in your



epitome of the document, and in your criticisms upon the opinions expressed in it. You remark, that "This petition was presented to the house of assembly, and referred to a committee," who "stated in their report, *what they represented to be facts*"—and after exhibiting an imperfect and deceptive view of the contents of that report, you bestow your censures in the unwarrantable and offensive terms which follow. "It cannot but be observed with what *partiality* the committee contrast the merits of Dod and Fitch with those of Livingston and Fulton." "But it is evident," you say, "that the committee were *perfectly ignorant* of the subject on which they *affected to give* the house information." "That part of the report, stating that the recitals of the act of 1798, are untrue," you aver to be "*much more unpardonable than the mistakes of ignorance*."—And "on this point," you assert, "the committee had no sort of testimony before them. They did not ask for testimony—they were content with the representations of the petitioner."\*

Repugnant as it is to my feelings, and incompatible as it may be with my pursuits, to engage in a discussion commenced with so much acrimony on your part, yet I am bound, Sir, to repel such imputations,—by respect to public opinion;—by a sense of duty to the gentlemen who were associated with me on the committee;—and by every motive and principle of self defence. In executing the task thus imposed upon me, it is by no means my intention to invade the jurisdiction of the professed critic, by attempting a general examination, and analysis of your work: sanction-

\* Vide Life of Fulton, pp. 240—244.



ed as it is, by the approbation of your learned associates of the Literary and Philosophical Society, I willingly leave its pretensions, as a rhetorical composition, and its value, as a piece of biography, to be settled by the public reviewers.—But I must be permitted, (notwithstanding the stamp affixed to it) to reject it as a model; in regard either, to fair statement of facts, or just deduction of consequences. Neither, Sir, is it my design to draw in question the merits of your deceased friend, as a “mechanist,” a “painter,” a “civil engineer,” a “political œconomist,” a “patriot,” or a “philanthropist.” These, Sir, though fit topics of your panegyric, are foreign to my argument:—Fortunately I have no motive for pressing them to my aid; I have no resentments to gratify,—no interests to promote: and were your eulogium of Mr. Fulton unassociated with injustice to the characters of others, I should claim no right, Sir, to remonstrate. The reputation which your friend has left behind him, for inventive genius, energy, and perseverance; for personal accomplishments, and address, as well as for “public spirit,” needed no exaggeration; and the new honours which Fame contemplates to his memory, can be denied only to the intolerance of that zeal, which, to ensure the elevation of his “Statue” to the loftiest niche, would bar the portals of the temple against every competitor.

That the subject of your memoir, and his coadjutor the late Chancellor Livingston, by their successful introduction of steam boats upon the waters of this state, were entitled to its gratitude and bounty, I have ever been amongst the most



forward to admit; but I have felt myself bound to deny, that the mode in which they were rewarded by the state,—was in conformity to the rules of sound legislation, or liberal policy; consistent with an equitable regard to the claims of others; or reconcileable to the principles of our government:—because neither Mr. Livingston nor Mr. Fulton was the inventor of the steam boat, and the privileges conferred on them, not only necessarily exclude all future improvements by others, in the art of steam navigation, but prohibit the use, even by the inventors, of all prior discoveries;—because the right vested in them is in conflict with rights derived under the Constitution and Laws of the United States;—and because the penalties by which that right is sanctioned, are in violation of the fundamental laws of this State, disproportionate, unnecessary, and unjust.

It would be irrelevant to my present purpose, further to unfold the reasons for the opinion expressed upon the first point which I have stated; for however inconsistent it be with the spirit of a wise, and equitable system of laws, to confer exclusive privileges, in recompense for any merit and exertions, but those of original genius;—however contrary to the acknowledged principles of political œconomy, to grant a monopoly of the elements of invention in one whole department of discovery;—yet if the legislature have fallen into this error;—if they have actually vested in individuals, rights hostile in their exercise to the general interests; they cannot on that ground avoid or resume their own grant; they alone had authority to judge of the



expediency of the measure, and the public faith is bound by their decision. Nor should I have ever been disposed to draw in doubt the correctness of that decision, had it not received a greater latitude of construction, than, in my humble conception, is warrantable: and when, Sir, I assure you, that under different circumstances, I should have acquiesced most heartily in the grant of a *Monopoly*, properly restricted, to Messrs. Livingston and Fulton; you will not, I trust, suspect me of an invidious design, when I apply this term to their exclusive right. For although monopolies which extend beyond invention have been denounced by the most enlightened political Philosophers;—although they have been declared, “odious in the eye of the common law;”—yet I do not hesitate to allow that, if the State had power in any case to grant one, the privileges of Messrs. Livingston and Fulton, might have been vindicated, upon the same principles upon which a monopoly of a new machine, or a new book, is granted to the inventor, or the author,—*had those privileges been confined to that particular mode of propelling boats by Steam which they so successfully introduced into operation.* But if their grant be liable to be so extended, as to be brought into direct conflict with rights vested in others by the paramount authority of the Federal government—the State has a right, to define the limits of its own jurisdiction; and without fixing new bounds to its own grant, to declare that it was never meant to include privileges of which it had previously divested itself of authority to confer;—and if upon deliberate reflection, it be found, that the statutory remedies given to pro-



fect that grant, are repugnant to the conditions of the Constitutional Compact;—it becomes the duty of the legislature to repeal them. This, Sir, is the view of the subject, which was taken by the committee;—and in order to its clear elucidation, a minuter exposition becomes necessary, of the facts and reasoning by which the latter principles which I have assumed are established:—But before I proceed to discuss them;—before I can hope to apply them intelligibly; I must solicit your attention,—to a summary of the laws granting the exclusive privileges of Messrs. Livingston and Fulton, and imposing penalties and forfeitures to protect and enforce their rights;—the exceptions taken to these laws by Col. Ogden in his memorial;—and the reasons urged by him, to the Committee, for their modification, or repeal.—A retrospect which is rendered more indispensable, from the partial and imperfect representations which you have given in your book, upon each of the topics which I have enumerated.

I. As to the laws.—I must confess, that I remarked with no less regret, than surprise, that in the first passage of your memoir relative to this exclusive privilege, you should have so expressed yourself in regard to the original act passed in favour of Mr. Livingston, as necessarily to induce a conclusion, that no prior law whatsoever, existed in this State, upon the subject of Steam navigation. After stating that as early as the year 1798, Chancellor Livingston “believed that he had accomplished his “object, and represented to the Legislature of the “State of New-York, that he was possessed of a “mode of applying the steam engine to propel a



“boat on new, and advantageous principles; but  
 “that he was deterred from carrying it into effect,  
 “by the uncertainty, and hazard, of a very expen-  
 “sive experiment, unless he could be assured of  
 “an exclusive advantage from it, should it be found  
 “successful.” You proceed, “the Legislature in  
 “March 1798, passed an act, vesting Mr. Living-  
 “ston with the exclusive right and privilege of na-  
 “vigating all kinds of boats which might be propel-  
 “led by the force of fire, or steam, on all the wa-  
 “ters within the territory or jurisdiction of the state  
 “of New-York, for the term of twenty years, from  
 “the passing of the act; upon condition that he  
 “should within a twelvemonth, build such a boat,  
 “the mean of whose progress should not be less  
 “than four miles an hour.”\* When you framed  
 this abstract, Sir, you could not certainly have for-  
 gotten an act passed on the 19th of March 1787,  
 by which these same privileges had been previously  
 granted for fourteen years to JOHN FITCH;†—for the  
 very title of the act of 1798, is an “act entitled  
 “an act repealing ‘*an act for granting and secur-*  
 “*ing to John Fitch the sole right, and advantage of*  
 “*making and employing ‘THE STEAM BOAT’ by him*  
 “*lately invented;*’ and for other purposes.”‡ The  
 words, descriptive of the grant are contained in  
 the former law, and are not to be found in the lat-  
 ter; which besides that part of the preamble to  
 which your quotation is restricted, recites further,  
 that “John Fitch was either dead or had with-

\* Life of Fulton, p. 144.

† Vide Appendix A.

‡ Appendix B.



“ drawn himself from this state, without having  
 “ made any attempt in the space of more than ten  
 “ years for executing the plan for which he so ob-  
 “ tained the exclusive privilege, whereby the same  
 “ was justly forfeited ;”—and then it merely extends  
*privileges similar to those granted to John Fitch* to Mr.  
 Livingston. for the term of twenty years, not only,  
 upon the condition mentioned by you, (of the per-  
 formance of which a certain mode of proof was  
 prescribed), but upon the further condition that he  
 should “ at no time omit for the space of one year  
 “ to have a boat of such construction plying between  
 “ the cities of New-York and Albany.” When  
 therefore, you could not possibly have informed  
 yourself, of the nature of the privileges granted to  
 Mr. Livingston by the one act, without having re-  
 course to the other. I am at a loss, Sir, to conjec-  
 ture, why you should have avoided so sedulously,  
 all reference to the rights previously vested in Mr.  
 Fitch,—unless it were to conceal the fact of his hav-  
 ing been deprived of them by the very act which is  
 the ground and foundation of the privileges, now  
 enjoyed by the associates and representatives of  
 Mr. Fulton. You may also have supposed it im-  
 portant to the interests of the parties concerned, to  
 avoid suggesting a comparison between the two  
 statutes, and the times, and circumstances, under  
 which they were respectively enacted :—for the  
 exclusive privilege of Fitch, was given to him as  
 the “ inventor” of “ the steam boat :”—the sub-  
 sequent grant to Mr. Livingston, was obtained up-  
 on the suggestion, of his being the “ possessor of  
 “ a mode of propelling boats by steam, and upon new



“and advantageous principles.” The one was absolute, and unconditional; the other was without effect, unless evidence were produced, within a time limited, of the efficacy of the plan; and the right was divested, if at any time afterwards the grantee omitted for a certain period, to have a boat plying on the Hudson. The rights of Mr. Fitch were moreover secured to him, before this State had ceded any portion of its sovereignty to be incorporated in the supreme government of the Union, and at a time when no law of her own, granting similar privileges to another individual, subsisted.—But the act in favour of Mr. Livingston, was passed subsequently to the adoption of the Federal Constitution; after Fitch had actually obtained a patent for his invention, under the laws of the United States, for a term of years, of which the one-half only had expired; and it repealed Fitch’s prior subsisting grant from the State, before the period stipulated for its continuance had elapsed; and upon a bare suggestion, without proof of the facts, upon which a forfeiture was alleged to have arisen!

It also struck me, Sir, as somewhat remarkable, that your learned associate, Dr. Mitchell, in the minute account with which he “favoured”\* you, of the nativity of “his bill,” as he styles the act of 1798, should have neglected to commemorate *its rejection by the Council of Revision*; for reasons which are entered at large upon the journals of that session, at which the learned Professor attended as one of the

\* Vide Life of Fulton, p. 145.



representatives of your City.\* Although your obliging correspondent tells you with great frankness, "that the main ground of objection to *his* bill" "was, that it was an idle, and whimsical project, and "unworthy of legislative attention,"—it appears, nevertheless, to have been treated with sufficient seriousness, as it was finally passed by the constitutional number of two thirds, of both houses, notwithstanding the objections of the Council. The Doctor remembered, with perfect accuracy, that the "*Wags*, and the *Lawyers*, were generally opposed to it;" but he totally forgot to include Governor JAY, and the JUDGES. Whether this omission is to be attributed to any particular species of *somnambulism*, that scientific Statesman may possibly, think a fit subject of investigation, by some Body Corporate of Literature and Philosophy;—but really, Sir, I should have supposed the fact could hardly have eluded your researches, and inquiry.—It was certainly recalled most forcibly to the recollection of your friend, General Lewis,† when in the midst of the laboured attack upon the opinions of the Committee, which he made in the Senate, his own name, was pointed out to him, as present in the Council, and concurring in an objection to the act of 1798, similar to one which he had reprobated in the Report. But were this latter circumstance also unknown to you, the existence of Fitch's prior grant, and the transfer of his privileges to Mr. Livingston, were events too

\* Appendix C.

† The same gentleman who is mentioned at page 98 of "the Life," in connection with the subject of *Torpedo Warfare*!



prominent to have escaped your observation; and when you undertook to relate the history of that grant, to your contemporaries, and to record it for the information of posterity, you owed it to candour, and to truth, not to have suppressed them.

But to proceed—The time allowed for exhibiting the proof required by the act of 1798, elapsed without its production, and on the 29th of March 1799, the legislature (as mentioned in the report of the committee, but unnoticed in your book) upon the petition of Nicholas I. Roosevelt, representing that he, and his associates, had not been able to comply with the conditions of the former law, and praying that no advantage might be taken of such non-compliance, passed an act by which the law of 1798 was continued in force for twenty years, from the first day of June then next ensuing;—*provided* the several conditions of the former act should be complied with within two years from that day.\* They were not complied with:—This new act had been suffered to expire, and the law of 1798 had become obsolete with it, when on the fifth of April 1803, another act of the legislature “extended” Mr. Livingston’s privileges to “Robert R. Livingston and Robert Fulton, for twenty years,” and enlarged the term for exhibiting the proof required by the former statute for two years.† Four years after this, and of course two years after the period limited for the production of the proof had expired, to wit, on the 6th of April, 1807, the act of 1803 was “extended for the term of two years, to exhibit the proofs therein required.”‡

\* Appendix D.

† Appendix E.

‡ Appendix F.



The condition as to the evidence was performed in the course of the ensuing summer—and then it was for the first time since the original grant to Mr. Livingston, that a boat propelled by steam at the rate of four miles an hour, “plied between the cities of New-York and Albany.” The success of the enterprise having thus been proved, and the profits ascertained to be immense; the Legislature was again applied to, and on the 11th of April 1808, it was enacted in substance, “that wherever Messrs. Livingston, and “Fulton and their associates, should establish one or “more steam boats (which they must have done, if they meant to avail themselves fully of their privilege) “other than that already established, they should “for each such additional boat, be entitled to five “years prolongation of their grant, provided that “the whole term of their exclusive privilege should “not exceed thirty years from the passing of that “act.” And all persons were prohibited “from setting in motion, or navigating upon the waters of “this state, or those within the jurisdiction thereof, “any boat or vessel moved by steam, or fire, without the license of Robert R. Livingston and Robert “Fulton, their associates and legal representatives, “or a major part of them, under the penalty of forfeiture of such boat, and her engine.”\* By a subsequent statute of the 9th of April, 1811, “to enforce more effectually the provisions of the preceding act,” the forfeitures therein mentioned are “deemed to accrue, on the day on which any boat,

\* Appendix G.



moved by steam, or fire, not navigating under the license of Messrs. Livingston and Fulton, shall navigate any of the waters of this state, or those within its jurisdiction, in contravention of that act; and that Messrs. Livingston and Fulton, and their associates should be entitled to the *“same remedy both in law and equity, for the recovery of such boat, with her engine, tackle, and apparel as if the same had been tortiously, or wrongfully taken out of their possession. And that, when any writ, suit, or action, is brought for the recovery of such forfeitures, the defendants in such suit, or action, the captain, mariners, and other persons employed in so navigating, with and employing such boat in contravention of the said act, shall be prohibited by writ of injunction, from navigating with, and employing such boat, or engine, or from removing the same or any part thereof, out of the jurisdiction of the said Court, or to any other place than that which shall be directed for their safe keeping, by the Court during the pendency of such suit, or after judgment shall be obtained, if judgment shall be against the defendants or the matter or thing shall be forfeited.”\**

II. It was against these laws in general, and in particular, against the operation of the two last, that Mr. Ogden, (whose name you have scrupulously forbore to mention) sought relief by his memorial to the Legislature.† He represented in it, that he was the proprietor of an ancient ferry between Elizabethtown point, in the state of New-Jersey, and the city of New-York; which, (on the side of the City) he held under a lease from the corporation. Considering, as he stated, the establishment of a Steam

\* Appendix H.

† Appendix I.



boat, as not only tending to the public benefit, but as necessary to preserve to him his accustomed business, and having received opinions from eminent Counsel in this State,\* that the running of such a boat upon his ferry, would not contravene the laws then in force. He contracted for the building within the state of New-Jersey, of a boat of a convenient size, and entered into an agreement with one Daniel Dod, also a citizen of New-Jersey, that the latter should contract on his behalf, for a steam engine to propel the boat according to a plan of Dod's, which did not interfere with any invention known to have been secured by patent to any other person, and containing an important improvement, for which he had obtained a Patent, under the Constitution and Laws of the United States, and of which he had assigned to the memorialist a privilege of using. Col. Ogden then alleged, that he completed his Steam boat upon this plan, and procured for her a coasting license, under the Revenue Laws of Congress. He further represented, that before the adoption of the Federal Constitution, John Fitch, formerly a resident of the state of New-Jersey, constructed and used a Steam boat, capable of being employed in useful purposes, and as the inventor thereof, obtained from the States of New-Jersey and New-York, an exclusive right to the use of boats, moved by Fire or Steam, on the waters of those States, or on those within their respective jurisdictions, for a term of years, which had then expired: that in the year 1791, after the adoption of the Constitution

\* Richard Harison, Josiah O. Hoffman, and David B. Ogden, Esquires.



of the United States, Fitch had obtained a Patent for his invention, under the Federal government, for a term of time, which had also expired ; and that he (Ogden) had obtained an assignment from the administrator of Fitch, of "all the benefits and rights, " which can, or may accrue from such invention of " the said John Fitch." And he further stated, that after he had made his contract, and whilst he was building his Steam boat, the Law of the 9th of April, 1811, was passed by the Legislature of this State : by the operation of which, he complained, that if he attempted to use his Steam boat, upon his accustomed Ferry, he would, in effect, without trial, on law, or fact, by a necessary act of Court, and by her natural decay, lose his boat and her profits, without having any action for damages in case of false claim ; whilst he was excluded from an opportunity of pleading at law, the various defences which naturally arose from his case as he had stated it. Contrary, therefore, as he declared, to his original purpose, and in order to avoid ruin to himself and his family, he determined to run his boat from Elizabethtown Point to the City of Jersey, and to make application to those entrusted by this State with the power of granting licenses, for permission to run his boat to the city of New-York ; for which he alleged he had made the most liberal offers, which were either wholly rejected, or acceded to only on condition of his "submitting to the most unparalleled exactions." That he was therefore constrained to address himself to the *justice* and magnanimity of the Legislature, and to pray that they would, according to their unalienable right, pass a further



“ Act, declaring that the laws which had been en-  
 “ acted relative to Steam boats, were not intended  
 “ to appropriate to the grantees under them the  
 “ use of the waters lying intermediate between  
 “ New-York and New-Jersey, to the exclusion, or  
 “ in any manner to the prejudice of the citizens of  
 “ New-Jersey, in their free and common use of such  
 “ waters; or so as to interrupt those mutual tolera-  
 “ tions, and that liberal policy, which should be re-  
 “ ciprocated between neighbouring and friendly  
 “ states in their intercourse with each other; or so as  
 “ to abridge the rights of others, as fundamentally  
 “ established in the nature of things; or as derived  
 “ from the constitution and laws of the United  
 “ States; and containing a further provision that no  
 “ process of injunction shall be issued by any Court  
 “ in obedience to the laws aforesaid, until it shall  
 “ have taken security in such way and in such sum, as  
 “ to it may seem proper, for the payment of the par-  
 “ ty who may be injured thereby, for all losses and  
 “ damages which may ensue therefrom, in case the  
 “ suit should be discontinued, or judgment should  
 “ pass for the defendant, in any Court of Law, or  
 “ Equity, in this State.”

These, Sir, are the fair contents of Mr. Ogden's  
 Memorial, and these the precise terms, in which  
 he solicited relief. I have been thus particular in  
 stating them, because your imperfect exposition of  
 his claim, has probably engendered false notions as  
 to its nature, and of consequence given birth to mis-  
 conception, in regard to the opinions of the Com-  
 mittee. You state, Sir, that “ the petitioner for this  
 “ repeal, founded his claim to this concession: First,



“ on his having purchased the right of John Fitch to  
 “ exclusive grants which had been made to him  
 “ from New-Jersey and New-York ;” and “ se-  
 “ condly,” you observe, “ it was represented that  
 “ one Daniel Dod was entitled to the favour of the  
 “ Legislature, on account of his having invented a  
 “ method of uniting, by what he called a parallel  
 “ link, parts of the machinery, different from that  
 “ adopted by Mr. Fulton.”\* But you omit to no-  
 tice that the *Petitioner*, (a mysterious delicacy for-  
 bids the naming of “ one” Aaron Ogden) was the pos-  
 sessor of an ancient ferry upon waters common, as  
 he contended, to the two states of New-Jersey and  
 New-York; you say nothing of his coasting License,  
 —or of Fitch’s patent,—or of Mr. Ogden’s negotiation  
 with Messrs. Livingston and Fulton,—and you refrain  
 from noticing, that he was actually building his boat,  
 and constructing his engine, before the act of April,  
 1811, was passed ; although you had previously re-  
 marked, with some emphasis, that “ two boats, na-  
 “ vigating the Hudson, and one which ran on Lake  
 “ Champlain, in opposition to Livingston and Fulton,  
 “ had been excepted from the operation of that act,  
 “ because the law, authorizing very prompt and effi-  
 “ cient measures, would, as to these boats, have been  
 “ *ex post facto*, if they had not been excepted.”† The  
 name of Daniel Dod, you condescend, indeed, to  
 mention ; but then, Sir, you have connected it with  
 statements, which, instead of informing, as you had  
 professed, have probably misled the ignorant. Mr.  
 Dod had not, as I conceive, been represented by

\* Life of Fulton, page 238. † Vide Life of Fulton, page 238.



Col. Ogden, as being particularly "entitled to the favour of the Legislature;" he had certainly not been so represented, upon the ground of his having invented an improvement of Mr. Fulton's machinery: on the contrary, it was alleged that his invention was an improvement upon the steam engine of Bolton and Watt; and it was shown that he had actually obtained a Patent for that improvement, and that he had assigned the privilege of using it to Mr. Ogden;—and this is set forth by the latter in his Memorial, evidently with the view of bringing his case within the Constitution of the United States, and the Patent Laws of Congress. You characterize this application of Mr. Ogden, as "a bold attempt" to induce the Legislature to repeal the laws which they had passed, for the protection of their exclusive grant to Messrs. Livingston and Fulton; whereas it appears from his memorial, that he asked only for their modification. If Sir, you had stated fully, the grounds upon which he prayed for the interposition of the Legislature, you might not perhaps have excited so much surprise at his "temerity," but your learned auditors, and your unlearned readers, would have discovered that he had "grounds more relative," as well as more honourable to himself, and to his cause, for anticipating success, than those which you have ascribed to him; and you might have spared your own feelings of propriety, the violence which they must necessarily have suffered, when you thought it incumbent upon you to assert, that "Success in New-Jersey had convinced the petitioner, that in every numerous assembly, there were men, whose envy and ignorance, would give a chance



“ of success, to any proposition to take from genius  
 “ its credit, or reward.”\*

III. The allegations contained in this memorial were supported by evidence adduced before the Committee as to the material facts; and it was contended in argument, by Mr. Ogden, 1st That the act of March 1798, and the several laws supplementary to it, gave no title to the exclusive right of Steam Navigation—but if otherwise, 2d. That the general terms of these statutes, if to be construed *in extenso* would operate beyond what must be presumed to have been, the intention of the Legislature—and 3d. That the extraordinary penalties and provisions, by which this exclusive navigation is guarded, did in effect preclude its ever being called in question, in a course of judicial proceeding, even though the claim under the laws should be extended beyond their fair construction. The two former objections apply to the right or title supposed to have been given for the exclusive navigation by Steam, the latter to the remedies, which have been created for its security.

1st. As to the title. It was objected that an exclusive right to steam navigation, had been granted to John Fitch in the year 1791, under his patent, for the invention of “ THE STEAM BOAT,”—emanating from competent and paramount authority, and the title derived under the State law, being subsequent, was upon obvious principles therefore, void. That the exclusive privileges granted by the act of 1798, were to be vested on a condition precedent, to wit, “ that the grantee was to make a practical

\* Life of Fulton, page 240.



“ Steam boat, according to a mode *then* possessed by “ him,” of applying the steam engine to propel a boat on *new*, and advantageous principles ; that is to say, on principles then known to him, *different from those of Fitch* ; which condition it was contended had never been performed, and of course, that the title had never come into existence. It was urged also, that the act of 1793, was obtained under an entire misapprehension, arising from the unfounded suggestion that Fitch had made no attempt to execute the plan for which he had also obtained an exclusive privilege from this State ; and thence it was argued that on principles applicable to all contracts, this circumstance vitiated the grant to Mr. Livingston. To an objection that the title did not depend on the act of March 1793, but on the act of April 1808, it was replied, that the law of 1808, did not *per se*, give any title, that it was merely a *prolongation* of the grant, or “ *contract*,” so called, of Messrs. Livingston and Fulton, and that then it created the penalty of forfeiture against the person who should navigate by Steam without their license. If this act were to be deemed the foundation of the grant, it was contended, that it could no more lawfully convey a title, than the other ; because the Legislature could no more take away the *Common* right of navigating by steam in 1808, than the *exclusive* right of so navigating in 1793 :—for the exclusive right was possessed by Fitch, in virtue of his patent, until 1805 ;—after which period the use of Steam Navigation, or of “ *The Steam Boat*,” became common to every citizen of the United States. If any new principle, or improvement had been since secured by Patent from



the United States, the patentee would of course be entitled to its exclusive use. But as yet no *new principle* had been shown, and the grant from the state comprehended the original substantial invention, as well as any improvement made upon it. Thus far was it argued against the title, by the Memorialist, who alleged that it was not only the practice in England, according to the declaration contained in the Statute of Monopolies, for Parliament to resume its grants, upon just grounds; but that the Legislature of New-York, in this very instance, by the law of 1798, had for the reasons set forth in its preamble, forfeited the title which had been previously acquired by Fitch, under its own law of 1737. Colonel Ogden admitted the difficulty of ascertaining the true limits of legislative power, and the hazard of its interference, in regard to its own grants, but at the same time he urged the corresponding difficulty of fixing the exact point, at which the judicial power may interpose, and declare void an act of the Legislature. He stated that he should not have applied to the Legislature, if he could have had access to the Courts;—free from liability to enormous penalties, in case he should happen to have misconceived the true boundaries, between the Legislative, and Judicial authorities:—He urged the impossibility of his trying his right as a citizen of New-Jersey, to navigate by means of a steam boat,—with a coasting license,—from a port in that state, to a port in New-York,—over the intermediate waters, or his right so to navigate from one port of New-Jersey, to another port of the same State, if in such navigation, he should be compelled to pass over waters, within the



jurisdiction of New-York,—without being subject to these penalties ; and he insisted that to those intermediate waters the grant of Messrs. Livingston and Fulton did not rightfully extend.

2d. In regard of the penalties by way of remedy, it was urged in the first place, that they were cumulative, and unnecessary ; inasmuch as the parties were entitled to their action at Common Law, for damages in case of any violation of their right, as well as to an injunction out of Chancery independently of any Statute. This injunction might be obtained upon the filing of a bill, would be continued at all events, if the equity of that bill were not denied in the answer, and rendered perpetual in case the right should be established by a final decree. These, the Memorialist asserted, were the only remedies hitherto known, for the protection of exclusive rights, and were an adequate security to the grantees for the enjoyment of theirs. In the second place, it was urged, that these cumulative remedies were unreasonable, disproportionate, and oppressive ; in as much as a boat necessarily of great value, was forfeited for a transgression of not more, probably, than nominal damage ; and the forfeiture accruing on her first running—she might be seized without any previous trial, or judgment, whilst the party for whose benefit the seizure is authorised, would be protected from responsibility in damages, even if such seizure should turn out to have been unlawful ; and as the property was not only liable to be seized, but directed to be kept in custody of the Law during the trial ; there would be, at all events, a total loss sustained from its perishable nature, without the possibility of re-



compense. All this the memorialist insisted was manifestly contrary to the first principles of justice, and a violation of the spirit, if not of the letter of the Bill of Rights and he therefore felt himself, he declared, warranted in believing that the Legislature would either decide upon the merits of his objections to the title of Messrs. Livingston and Fulton, or remove the penalties by which all opportunity was in effect foreclosed, of putting into a course of trial, the exceptions he had taken to the validity, and extent of their grant.

Upon hearing the proofs, and allegations of the parties in relation to this case, the Committee were deeply impressed by its difficulty, as well as its importance. They perceived at once that it imposed upon them the task of an extensive research, and the duty of an embarrassing enquiry—upon points of great delicacy—and as a satisfactory and proper issue could result only from the utmost caution, as well as a diligence, upon their part; they gave to the subject submitted to them, a patient, impartial, and deliberate investigation. For reasons which I have already indicated, they would not of course, take into consideration any question relative to the *impolicy* of the grant to Messrs. Livingston and Fulton; nor would they recommend a legislative decision upon the objections raised by Mr. Ogden against its *validity*; upon the ground either, of the prior subsisting grant to Mr. Fitch;—the forfeiture of Fitch's right, without proof of the facts upon which that forfeiture was grounded;—the unfounded suggestions upon which, it was alleged, Mr. Livingston had obtained a transfer of that right to himself;



or the non-performance of the condition, upon which the latter title was to have arisen. These were questions properly of judicial cognizance; which the courts of law in the *ordinary exercise* of their powers would be competent to decide. Neither Sir, would the Committee suggest any provision grounded on the claim of Col. Ogden, to the navigation of the intermediate waters;—for this obvious reason,—that a controversy actually existed between the States of New-York and New-Jersey, in regard of the limits of their respective jurisdictions upon these very waters:—The one claiming to high water mark on the Jersey shore, and the other, *ad filum aquæ* upon Hudson's River and its estuary.—But with respect to the questions arising out of the Constitution and Laws of the United States, as they affected the extent of the power, and the limits of the jurisdiction of the State, in relation to a grant of exclusive privileges:—the Committee were of opinion, that the Legislature might interfere with propriety, to prevent collision, between the powers ceded to the general government, and the right claimed, or exercised under a law of the State. This interference they supposed to be due to every citizen of this State, in respect of his rights as a citizen of the United States, as well as to the petitioner; and they thought this general object, might be best effected by a declaratory act; whilst a modification of the statutes, giving the extraordinary remedies to Messrs. Livingston and Fulton, would, at the same time, enable the Petitioner to establish his right, if upon any ground he had one, in the Courts of Justice.



Having thus called your attention, in successive order,—to the laws granting and protecting the exclusive privileges of Messrs. Livingston and Fulton ;—the exceptions taken to them by Mr. Ogden ;—and the reasons urged by him, for their modification, or repeal ;—I now proceed, according to the method proposed in the commencement,—to develop the principles which governed the Committee in their deliberations, and led them to adopt the Report presented to the House. And this developement, necessarily induces a full consideration of the powers, both of the General and State governments in relation to the subject.

The exclusive right of an author to his writings, and of inventors to their discoveries, is the creature of a very refined state of society ; the abstract notion of such a right supposes an advanced stage of civilization—for a defined property in the fruits of mere intellectual labour, is one of the latest improvements in the history of Civil Jurisprudence. The very existence of such a right has been denied from the Bench\* in England ; and even those able and learned judges who, reasoning upon sounder principles, arrived at a more correct result, were perplexed with the indefinite nature of the right at Common Law, and embarrassed by the consequences of admitting it. On the one hand, to deprive men of genius of the right to the profits of discovery, was discouraging the useful arts, and throwing impediments in the road of science ; on the other, an unlimited

\* By Mr. Justice Yates in the great case of *Miller vs. Taylor*. 4 Burr. 2303.



right to the exclusive enjoyment of the fruits of genius or discovery, though it for a time, might stimulate both, yet in its consequences, would levy a perpetual tax on posterity, and oppose a bar to the progress of invention itself. The enlightened men who framed the Constitution of the United States, were aware of this; and they introduced an Article into that instrument, vesting in the Congress, a power by which they might facilitate the transmission of discovery to future times, and provide a reasonable period for the exclusive enjoyment by authors and inventors, of their productions:—thus harmonizing the demands of genius, with the claims, and interests of the public. The Constitution accordingly declares, “That the Congress shall have power, to promote  
 “the progress of science, and useful arts, by secur-  
 “ing for limited times, to authors, and inventors, the  
 “exclusive right, to their respective writings and  
 “discoveries.”\* In execution of which power, two acts of congress have been passed, and are now in force—one “to promote the progress of useful arts”†—and the other—“to extend the privileges of obtaining Patents for useful discoveries, and inventions, and to enlarge and define the penalties, for violating the rights of Patentees.”‡ The objects therefore of this provision, in the Constitution, and of the laws enacted in virtue of it, were two fold. First, to secure to inventors, and to authors, the fruits of their labours; and secondly; to secure to the public, the benefit of their works, by bringing them into

\* Const. U. S. art. 1. sec. 8.

† Laws U. S. vol. 2. p. 200.

‡ Laws U. S. vol. 5. p. 88.



the common stock, after the expiration of the time limited for the exclusive privileges of the individuals, by whom they were produced.

Now Sir, I do most humbly conceive, that these objects can only be effected by such a construction of the Article of the Constitution, as will leave to Congress the *exclusive* power, of securing to authors and inventors the right to their productions. It is necessary to the argument, Sir, to distinguish between the *general end* for which the power was vested in Congress—and the power itself; or in other words, from the *means to effect that end*. The general end for which the power was given was, “to promote the progress of science, and the useful arts,” the means by which that end was to be effected, were “by securing for limited times to authors, and inventors, the exclusive right to their respective writings, and discoveries.” It is not therefore a general and exclusive power to promote the arts and sciences which has been ceded to Congress, by the several States; but one amongst innumerable means of effecting that object:—and I conceive that to the exercise of this simple power, which alone has been ceded, Congress have an *exclusive* right, arising by necessary implication, both from the *nature*, and the *terms* of the grant. I am aware, Sir, that in many subjects which admit of a concurrent exercise of power, by the general government, and the several states, the power ceded to the former by the latter may not be, and generally is not, an exclusive one. When therefore I speak hereafter of concurrent powers, I wish to be understood as meaning to refer to them *quoad subjectam materiam*, viz. “the right to secure to authors, and in-



“ventors, for *limited times*, the benefit of their productions.” The power under consideration comes under the third class of cases enumerated in the thirty-second number of the Federalist. It is the case of a grant to which the exercise of a similar power in the states, would be repugnant, and contradictory. The example which the learned and eloquent author of that paper, has selected to illustrate his reasoning, involved a contradiction by direct implication, from the force of the terms. It was an example taken from the power vested in Congress, to establish an *uniform* rule of naturalization; and it was argued that such power must necessarily be exclusive; because if each State had power to prescribe a distinct rule, the rule of Congress could not be *uniform*.\* However well chosen the example selected by the author of the Federalist, may have been for the purpose of illustration; it is evidently only one of a particular description, and wherever from the nature of the grant to Congress a like repugnancy shall follow the assumption of a similar power by the State; that assumption must be unlawful. In the present

\* The case of *Collet vs. Collet*, 2 *Dallas*, 294, is contrary to this exposition by the author of the Federalist, but this decision has been doubted to be law by Iredell, JUSTICE,—in the *United States vs. Villato*, 2 *Dallas*, 370. And well might the correctness of any opinion, however respectable, upon a point of construction of the constitution of the United States, be *doubted*, if opposed to that of General Hamilton; setting authority aside, he had certainly the best means of ascertaining the intentions of the Convention, who framed that instrument. Besides, whether this case be law or not, it does not affect the argument; as it only proves that the powers as to naturalization are concurrent, notwithstanding the implicit repugnancy arising from the word *uniform*.



case, the power given is exclusive from the nature of the grant; because if each State have a concurrent power, such power would defeat the two-fold object for which the Article of the Constitution intended to provide. That object I have shown, was to secure to the public, the free transmission of invention, as well as to secure to genius the advantage of its discoveries; but if the individual states have a concurrent power, the former branch of the object cannot be secured by Congress;—for if Congress prescribe fourteen years as the limit of exclusive rights, and render them common at the expiration of that period; each State may fix a different period, or may give a right of property to authors, and inventors, without limitation of time:—Neither can the latter branch of the object be secured by Congress;—because each State may, upon the supposition, reduce the term of exclusive enjoyment to a *minimum*, or declare the fruits and industry of genius to be common property.

Thus it appears by necessary implication from the nature of the grant that the power of Congress is exclusive. It is also necessarily exclusive from the terms of the grant. The words are, that Congress shall have power to secure the exclusive rights of patentees, "*for limited times.*" Now if the State have a power concurrent with Congress over the subject, it must be a power arising from the unceded portion of its sovereignty; and consequently a power to grant, *without limit of time*. It is clear then, that in the case supposed, there would be a repugnancy between the power of the State, and the power of Congress arising from the terms of the



grant; for how could Congress *secure* to the inventor for a limited time, the enjoyment of that which the State might grant to another for ever? It has been said (as was indeed urged before the committee) from high, and I had almost added unquestionable authority,\* ‘that if an author or inventor, instead of resorting to the act of Congress, should apply to the Legislature, for an exclusive right to his production, there is nothing to prevent the State from granting such exclusive privilege; provided it be confined in its exercise within its particular jurisdiction.’ The opinions of the present Chancellor, I regard with habitual respect and deference; yet he asserts no claim to infallibility, but on various occasions, with the characteristic liberality of genius and of learning, has inculcated the necessity of preserving the vigour and independence of reason by free inquiry—respecting, but not subdued, by authority. I may venture, I should hope without subjecting myself to the charge of presumption, as well as of *ignorance*, to differ from him in the speculative consideration of this subject; if (as has been the case already) I recommend in practice, an implicit conformity to his doctrine. I trust, therefore, I may be permitted to remark, that if the objection, founded upon the authority of his opinion, be correct; then one of two things must follow—either that Congress may secure to an inventor, or author, an exclusive right in his discovery, or writing; and the State secure to another person as the inventor

\* By the present Chancellor, and late Chief Justice, Kent, in the case of *Livingston vs. Van Ingen*, in the Court of Errors, 5 *Johns. Rep.* 581.



or "possessor" of the same invention, the exclusive right to use it, within its own jurisdiction: or that Congress cannot secure such right to the inventor, after the state has secured it to the "possessor." In the former conclusion, this consequence appears to be involved; that Congress may grant an exclusive right to one person, to the use of a certain thing throughout the Union; and that the individual State may grant an exclusive right, to use the same thing within the limits of a particular district, to another person: or in other words—that over the same subjects, and within the same jurisdiction, two co-ordinate powers (*quoad hoc*) may grant *exclusive* privileges to *different persons*. The latter branch of the dilemma supposes the States to derogate by an assumption of power from the express terms of their grant to the General government, and actually to exercise an exclusive power, to secure exclusive privileges, in direct contradiction to the terms of the power ceded to Congress. And it does not obviate this repugnancy to say, that when these separate powers *conflict*, or come in direct contact of opposition, "the grant of the State must yield to the Supreme Law of the Land:" because the repugnancy is directly deducible from the propositions themselves, and not from any casual consequences—springing from the accidental conflict of concurrent powers. What I humbly conceive to be the fallacy in the opposite argument, appears to have arisen from inattention to the nature of the subjects, on which the concurrent powers of the National, and State Legislatures may be exercised: *Expressio unius—exclusio alterius*, is in this case a max-



in, which extricates us from all difficulties. From the nature of the subject the bare grant of the power to Congress, is an exclusion of jurisdiction in the States; for otherwise, two co-ordinate Sovereignities would each have power to secure exclusive privileges in one subject:—But exclusive privileges in one subject can only be secured by the exercise of an exclusive power.

It was argued too, before the committee, that the exclusive right of the representatives of Messrs. Livingston and Fulton, cannot interfere with the rights of any future Patentee, under the Laws of the United States;—because whatever improvements may hereafter be made by Patentees, and secured by virtue of the Federal Constitution, the right to those future improvements cannot be affected by the State grant to Messrs. Livingston and Fulton: inasmuch as they cannot use those improvements without purchasing them from the Patentees. If, however, that grant be taken in the full extent of its terms, it must very materially affect the right of such Patentee: For although the representatives of Messrs. Livingston and Fulton may buy such improvements—no other persons can—as they alone could use them upon the waters of this State. They have therefore a monopolizing right of purchase to every future improvement in the art of navigating by means of Steam. This, however, is not all;—The grant to Messrs. Livingston and Fulton, completely destroys the right which every citizen of the United States, in the State, or *District* of New-York, would otherwise have, after a lapse of the “limited time” appointed by Congress for the exclusive privilege of the inventor; for, af-



ter the time appointed, whether it be fourteen, or eight and twenty years, the Public would, under the acts of Congress, have a full right to the benefit of the patentee's improvement :—but after that time, and until the expiration of their exclusive privilege, none but the representatives of Messrs. Livingston and Fulton, would have that right within this State.

The power ceded to Congress, confines them in their grants to Patentees, to two things. 1st, To a grant of an exclusive right for a limited time. 2d, To a grant only in the thing invented. Why, Sir, let me ask, was Congress thus restricted? For whose benefit was this restriction inserted in their power? Manifestly for the benefit of THE PUBLIC. If an author have any right of property in his writings, or an inventor in his discoveries, independently of the positive ordinances of political society, it may be unlimited, and capable of transmission to his legal representatives, *in infinitum*:—but at Common Law, this right was as insecure, as it was indefinite. To define the right, as I have already shewn, for the benefit of the Public, as well as to secure it for the advantage of the author or inventor, was intended to be effected by the Article under consideration. The public, therefore, throughout the Union, have an interest under this power of the Constitution, that after the time, which Congress may fix for the benefit of the author or inventor, the thing written, or invented, shall be yielded to the common stock.

To these reasons, and in the conclusion resulting from them, I know, Sir, that the decision of the Court of Errors, in the case of Livingston vs. Van Ingen,\* will be objected; and although

\* 9 Johns. Rep. 507.



I admit, that the reasoning of the learned Judges, upon the constitutionality of the laws granting to Messrs. Livingston and Fulton their exclusive privileges, stood opposed, upon some points, to the opinions entertained by the Committee; yet upon others, they were by no means irreconcilable: and it ought not to be forgotten, that, in that case, not only had the Court of Errors overruled the opinion of the Chancellor; but that their own judgment was not conclusive upon the question—an appeal lying from their decision to the Supreme Court of the United States, where alone it can finally be settled. It ought also to be remembered, that the Rules of the House of Assembly rendered it imperative upon their Select Committee, not only “to report a state of facts,” but to “declare their opinions upon them.” It was not, however, without the greatest distrust of their own judgments, that they ventured to differ, in any degree from such grave authority. Had they been sitting as Judges, in an inferior court of law, *stare decisis*, would have been their rule; and in their stations as Legislators, upon whom the task had devolved of devising a remedy against the injurious consequences of a State grant, which they believed to be unconstitutional, as well as oppressive and unjust, but which had been judicially pronounced valid—they resolved not to depart from the maxim. They did not shrink from the performance of their duty, although they felt the delicacy, as well as the importance, of the situation in which they were called upon to act. They determined, therefore, in framing the bill, proposed for adoption, not to interfere with the rights vested in



the representatives of Messrs. Livingston and Fulton, as recognized by the Court of Errors ; but, on the contrary, to define the extent of the State jurisdiction, in regard to exclusive privileges, in strict conformity with the principles of that decision.

The great question in the cause of *Livingston vs. Van Ingen*, was, whether the grant to Messrs. Livingston and Fulton was absolutely void, as made in contravention of the constitutional powers of Congress ? The court decided that the grant was not absolutely void—on two grounds. 1st, That, considering Messrs. Livingston and Fulton as inventors, the State had a concurrent power with Congress, to reward inventors by the grant of exclusive privileges. 2d, That, considering Messrs. Livingston and Fulton not as inventors, but as the possessors and importers of a foreign invention, the State had an independent power to reward them *as such* ; a power not ceded to Congress at all. And it must be borne in mind that the respondent in that case, showed no right or title whatever, and for aught that appeared, their mode of applying the Steam engine, in the navigation of their boats, was the same that had been already introduced by Messrs. Livingston and Fulton, the appellants. Throughout the whole discussion, the powers of the State are assimilated to the powers of Congress. The counsel for the appellants, in their argument, and two of the learned judges by whom opinions were delivered, Justices Thompson and Yates, explicitly admitted that the state powers can only be legitimately exercised in—"harmony with, and in subor-



"dination to the superior power of Congress.\*" In strict reasoning, therefore, no more can be inferred from the decision of the Court of Errors, than that the grant to Messrs. Livingston and Fulton, is so far valid as it secures to them, and their representatives, an exclusive right to that peculiar mode of navigating vessels by steam or fire, which they introduced into practice; and of which the act of March, 1798, states Mr. Livingston to have been in the possession. Such, we have seen, is the extent of the constitutional power of Congress, to which the State

\* Mr. Emmett, in his reply, says, "it is not denied, that where there is an actual collision with the Law of Congress, the State Law must yield." (2 Johns. Rep. 554.) Mr. Justice Yates observed in delivering his opinion, that "no doubt can be entertained but that the persons claiming a right by patent as inventors, would prevail, and the State Law would give way to the superior power of Congress." (Ibid. 561.) And Mr. Justice Thompson, (the present Chief Justice) declares, "that if any person should appear claiming under a patent, in hostility to the privilege granted by this State, that would be a paramount right, and must prevail, if set up in a Court having jurisdiction of the question." (Ibid. 367.) "Though it may well be doubted whether even a patent could be set up in the Courts of this State against those laws, as that might involve questions arising under the Laws of the United States, which belong exclusively to the Courts of the United States;" and cites 7 Johns. Rep. 144. Did the Chief Justice mean to be understood, by this qualification, as "doubting" whether matter of defence arising under the Constitution and Laws of the United States, and therefore ousting the State Courts of their jurisdiction in the cause, could be set up in those Courts? The case of *Parsons vs. Blanchard*, referred to by His Honour, is directly contrary. The Opinion delivered by Mr. Justice Van Ness, is not published in the Report of the Case; but it is stated to have been stronger, and much more decisive and full upon this point, than either of the others.



powers are resembled; and it is only by this limited construction of the grant, that the reasoning of the learned judges, to which I have referred, can be rendered applicable and consistent, as it is then only that a collision between this exercise of the State sovereignty and the constitutional power of Congress can possibly be prevented. Certainly the Court of Errors have not said, nor is there any grounds for supposing they meant to say, that the State, either by virtue of its concurrent power to reward inventors, or its independent power to reward the importer of foreign inventions, can prohibit the introduction and use, within its jurisdiction, of all future inventions, although secured by patent in relation to the same object; or by a still more violent stretch of authority, transfer the exclusive right to such inventions, from the Patentee, to the Legislative favourite. Yet if the terms of the original grant to Messrs. Livingston and Fulton, and of the various laws that have since been passed to enlarge and secure that grant, are to be taken in their literal extent, such would be their operation. By the act of 1798, all the privileges granted before to John Fitch, and his representatives, were transferred to Mr. Livingston. These privileges, we have seen, were "the sole, and exclusive right, of constructing, making, using, employing, or navigating, all and every species or kinds of boats, or water craft, which might be urged or impelled by the force of fire, or steam; in all creeks, rivers, &c. within the territory or jurisdiction of this state." The only limitation of this monopoly of navigation is, that steam, or fire, be made use of as



the propelling force, and the general terms of the grant comprehend every possible mode of producing and applying that force in the navigation of vessels, which human ingenuity has invented, or can invent. And by the act creating the forfeiture, the introduction within this state of any future discovery or improvement, however original, or valuable, in navigating vessels by steam or fire, is in terms prohibited, without the license of the representatives of Messrs. Livingston and Fulton; in whom the right to employ all such discoveries, or improvements, is exclusively vested.

Thus, Sir, the very ground upon which invention is to work is seized and preoccupied; and an exclusive privilege is granted, which not only prevents the future reward of security, to inventors, but in one important region, would stop the progress of discovery itself. The very elements, by which improvements can be made, are monopolized, and a "bold attempt," is successfully made, to exclude Congress from all opportunity of exercising the power given to them by the Constitution. Now, Sir, if this can be done by one State, in relation to any one subject, why may it not be done by all, and in relation to all? How is a line of discrimination to be drawn? Where are we to fix the limits of the State powers? Why may not the States respectively grant monopolies, (it is the proper, though odious name, by which such grants should be designated) embracing all the possible elements and materials of which inventions can be framed, and every possible subject to which they can be applied; and thus anticipate and frustrate, *in toto*, the exercise of the Constitutional power of



Congress, to secure an exclusive right to inventors? It may be said that this is an extreme and improbable supposition. I admit it to be improbable, that the States will attempt such an exercise of power; but it is by extreme cases,—or to speak with more propriety,—it is by pursuing a doctrine to its legitimate consequences, that we are frequently best enabled to detect or illustrate its absurdity. If the constitutional powers of Congress can be taken away by the grant of a State Monopoly in any case, I am unable to conceive why it may not, by similar means, be taken away in all cases. The principle once admitted, this consequence, of necessity, follows.

It was affirmed in argument by one of the learned Counsel, by whom the claims of Messrs. Livingston and Fulton were so ably vindicated in the Court of Errors, that “the only effect of a patent, is to confer  
“on the inventor an exclusive right of property in  
“his discovery; that at Common Law an invention or  
“discovery is not susceptible of appropriation; but  
“by the operation of a patent is converted into a chattel, a subject to which a right of property can attach.” The exercise, however, of this right of property is, it is said, still liable to be controlled and regulated by the municipal laws of the several States, who may prohibit the use of any particular invention, as noxious to the health, injurious to the morals, or in any other respect prejudicial to the welfare of their citizens. When I declare Sir, that I cannot help entertaining the strongest doubts of the truth and soundness of this doctrine; I must be understood to speak with the utmost diffidence in my own judgment, and with the highest respect for the authority



of those by whom it has been advanced, or adopted. It seems to me, that the government of the Union possesses exclusively, the power to determine whether an invention for which a patent is sought, be useful or pernicious, or in other words, whether it be one for which a patent ought or ought not, to be granted. The object of the constitutional power of Congress to secure an exclusive right to inventors, is the promotion of the "*useful arts*." An invention useless or pernicious, it is evident, would not be a proper subject for its exercise; should a patent for such an invention unadvisedly have issued, there can be no doubt that the Federal authority might repeal the patent, and interdict the use of the noxious discovery. The grant of this power to Congress, it seems to me, would be rendered completely nugatory by the admission that the States, in the exercise of an absolute discretion, may prohibit the introduction or use, of any particular invention for which a patent had been regularly obtained. Were this construction of the Constitution to be adopted, the States would retain, substantially, the power, which nominally, they have parted with. What is the Constitution?—It is the instrument by which the States have severally ceded to the general Government, a certain portion of their own sovereignty to be exercised for the common good. The power of securing an exclusive right to inventors is thus given. But if the states not only possess a concurrent power of granting exclusive privileges, but may in effect repeal and annul *ad libitum* any and all patents which have issued under the authority of Congress—what power, I would ask, Sir, in relation to this



subject, have they parted with? What portion of their sovereignty *quoad hoc* have they ceded? The whole value of a patent consists in the exclusive privilege of *using* the invention, which it is meant to ascertain and secure: To strip the inventor of this, to confer on him a barren and metaphysical right, is not to reward, but to mock, and insult him. A right of property implies a right to its use and enjoyment, so far as such enjoyment, is not inconsistent with the rights of others. It may be a good scholastic distinction, but it is very contradictory to reason and common sense, to say, that a man's right of property is not invaded, when his use and enjoyment of it are intercepted or prohibited. Suppose a State Legislature jealous of the overgrown and accumulating wealth of some unpopular Landholder, should, on the common pretext of the public good, release his tenants *in perpetuum*, from the payment of their rents? Such a law it seems would be no invasion of the rights of property; because the *fee simple* technically speaking, would still remain vested in the obnoxious Landlord. It is admitted by those who urged the doctrine against which I am contending, that the States cannot, in direct terms, divest, or take away an exclusive right secured by patent:—But to prohibit the exercise of such a right within the jurisdiction of a State, and during the whole of the period for which it has been granted, is in effect so far as the power of the State extends, to take away the right itself. There may be a difference in the terms employed, but the injury to the patentee is, in both cases, precisely the same; nor can I believe, Sir, that the Courts of the



United States would listen to the verbal distinction, by which such an usurpation of power, is sought to be justified.

It is not my intention to deny, that the States may by their own laws define, and modify the rights of property, within their respective jurisdictions, *where such a right has its origin in the State or Municipal law.* But it seems to have been forgotten, that the right of a patentee, is not derived from the State authority; but has its foundation in the Constitution and Laws of the United States. As a State prohibition of the exercise of such a right, in whatever terms expressed, under whatever pretext made, however coloured or disguised, would in truth be a violation of the right itself; I am forced to the conclusion, that such a Legislative act would be wholly void, as repugnant to that Law which is confessed by all, to be supreme and paramount.

But, Sir, let even this point be conceded—let it be allowed, that the States may prohibit, within their respective jurisdictions, the use of an invention to which an exclusive right has been secured by patent:—Such a prohibition, to be valid, must surely be founded upon motives of general policy and public good; and the use of the invention must be proscribed as pernicious in itself, either from the nature of the discovery, or the peculiar conditions and circumstances of the community in which it is sought to be introduced.—Warmly, Sir, as you have shown yourself the friend of Mr. Fulton, deeply interested as you probably are, in the support of the Monopoly—will you so far hazard your character as a lawyer, as to venture the assertion that a State may rightfully prohibit the



use of an invention *secured by patent, and confessed to be beneficial*, lest it should interfere with the supposed extent of a State grant?—and even in the plenitude of its authority, forbid to the patentee the exercise of his right, without the license of the State monopolists? No, Sir, with whatever specious terms this doctrine may be clothed—with whatever art defended, or eloquence enforced—in its essence it is destructive of those principles of connexion and subordination, upon the maintenance of which, our whole system of government depends. It is a doctrine which in effect asserts the supremacy of the State, over the general Government; and contemns and violates the fundamental provision of the national compact, that “THE CONSTITUTION AND LAWS OF THE UNITED STATES SHALL BE THE SUPREME LAW OF THE LAND.”\*

Such, Sir, were the conclusions of the Committee, and such the principles upon which they acted. In consequence of notice given by them they were attended both by Mr. Ogden, and by counsel employed by the persons whose interests it was supposed might be affected if the prayer of his petition should be granted. And here, Sir, as the opportunity presents itself, let me advert for a moment, to the charge of unjust precipitancy, which you insinuate against the Committee when you assert, that they refused to allow time “for Mr. Fulton to be sent for from New-York.”† I will not pretend to be positive at this distance of time, in the recollection of a circumstance of this immaterial nature: but I aver that I am unable to recall to memory any application whatever for delay; it is

\* Cons. U. S. art. 6.

† Vide Life of Fulton, p. 246.



not impossible, however, that it was made, and the Committee may have thought it useless and improper to defer the commencement of their inquiry until Mr. Fulton's arrival. But if a postponement were actually refused on this, or any other ground, to whom was the refusal given?—To the Counsel of Mr. Fulton;—to those whose presence was more important than his own;—to Counsel who had been retained by him, in every instance in which his rights have been questioned in the courts of law; who were possessed of all the facts, and were masters of his case—to yourself and Mr. Emmett,—who appeared and acted, and were heard on his behalf, night after night, before the Committee;—a circumstance which certainly never would have been suspected, from your account of their proceedings. Col. Ogden's memorial was presented on the 25th of February; immediately upon its reference you were apprised of it; you attended the first meeting of the Committee on the evening of the 26th, accompanied by your associate counsel. You both continued to attend their meetings until the discussion before them was closed—and as the report was not agreed upon until the 8th of March, you had an interval of ten days at least, in which you might have procured the attendance (had it been deemed necessary) of Mr. Fulton also. But the fact was, as you well know, Sir, that neither Mr. Fulton, nor the representatives of Mr. Livingston, were disposed to consider themselves concerned as principals in the business; they regarded it as the controversy of Mr. John R. Livingston, their grantee, and the proprietor of the Raritan Steam Boat, with whom it had originated;—and they did



not think it incumbent upon them even to present a Counter memorial to the House, until after the Report had been brought up. Your imputation, therefore, upon the Committee, founded upon this refusal, is as groundless, as I trust every other charge which you have preferred against them, will be proved to be in the sequel. If Messrs. Livingston and Fulton were not personally present, they appeared and were heard by their Counsel;—and after that hearing, the Committee bestowed upon the subject, the deliberate consideration which its delicacy and importance demanded; they had formed their opinions upon serious reflection; and they drew up with great caution a Report,\* setting forth minutely all the facts, and circumstances which were material:—and having, in conformity with the Rules of the Assembly, expressed their Opinions upon every point, presented for their consideration,—they concluded by submitting to the House a Bill, containing such provisions as they conscientiously believed might be passed, consistently with the faith, honour, and justice of the State. Here, Sir, we are at issue. You deny that the Bill, reported by the Committee, was reconcileable with either. But the arguments by which you attempt to support that denial, are derived from your own representations, not only of the rights of Messrs. Livingston and Fulton, and the objections urged in opposition to them by Mr. Ogden, but of the facts, and opinions contained in the Report of the Committee, and of the provisions of the Bill recommended by them for adoption.

I have already had occasion to advert to your er-

\* Appendix K.



rors in relation to the former subjects; and I now proceed in the same unruffled spirit to correct your statements and refute your reasonings in regard to the latter.

After the partial and imperfect view which you had exhibited, of the memorial, I was certainly not astonished by your suppression of those parts of the Report which, from their relation or correspondence with your former omission, might at once have indicated and supplied them. It would have been inconsistent, as well as useless, to have mutilated the one, without practising some little ingenuity of torture, upon the other. Accordingly the statements of the Committee, in relation to the act in favour of Mr. Fitch, and its repeal before the expiration of his grant, by the act obtained upon the bare suggestion of Mr. Livingston—the patent obtained by Fitch from the government of the United States—the claims of Mr. Ogden as the proprietor of an ancient ferry between New-Jersey and New-York,—are all, with the most laudable attention to congruity, screened from observation; and “the shreds and patches” of the Report, which are retailed in your book, are introduced by an insinuation as gross as it is unfounded. “The committee,” you say, “stated what they *represented* to be facts.”—“They stated” you continue, “that Dod without having seen Fulton’s Patent (but they do not say without having seen his boats) constructed an engine, and invented improvements which are material, and important.”—“That the Petitioner had built a boat with a Steam Engine on the plan of Watt and Bolton, improved by Dod, adapted to wheels turned by cranks.”—“That the boats built by Livingston and Fulton, were in sub-



“ stance the invention of Fitch ; and that the reci-  
 “ tals of the act of 1798, granting to Robert R. Liv-  
 “ ington an exclusive right, were not true, he not  
 “ then having been in possession of a mode of ap-  
 “ plying a steam engine to propel a boat on new, and  
 “ advantageous principles, as he had represented,  
 “ and Fitch having previously constructed a boat,  
 “ and obtained a Patent for it.”\* And this Sir, is all  
 you have thought proper to quote, or rather to pro-  
 fess to quote, from a long and elaborate report upon  
 this most interesting and important subject. That  
 this meagre remnant does not present a fair speci-  
 men of its contents, has already appeared, and will  
 be more conclusively evinced by a reference to the  
 Report itself. But upon this partial and imperfect ex-  
 hibition of this document, have you founded your re-  
 marks. Before, however, I undertake to examine the  
 commentary, I must beg permission to compare your  
 version, with the original text. The Committee in-  
 deed state that Mr. Dod, “ without having seen Mr.  
 “ Fulton’s patent, or *specification*, did make a small  
 “ Steam Engine as a model, in the making of which  
 “ he invented some improvements (as they believed)  
 “ of great importance ;”—and they add a circum-  
 stance which you Sir, may possibly have considered  
 wholly immaterial ; viz. “ *for which the said Daniel*  
 “ *Dod afterwards on the 29th day of November, 1811, ob-*  
 “ *tained a Patent from the United States.*” The Commit-  
 tee also state that Mr. Ogden’s *Steam Engine* was  
 “ constructed according to the old and well known  
 “ plan of Watt and Bolton, improved by Dod, and  
 “ adapted to wheels turned by a crank ;” but they ex-

\* Vide Life of Fulton, page 240.



pressly add, "that the said Aaron Ogden had built *his* "boat upon the principles invented by John Fitch as improved by the said Daniel Dod."—In the subsequent part of your extract, you again omit the passage relative to the repeal of Fitch's grant, and you suppress those words which exclude the imputation of intentional untruth in the suggestions upon which that repeal was obtained:—the Committee having merely stated that those suggestions "were not true in fact."

Having thus dissected the Report, and arranged the "*disjecta membra*," in the most convenient manner, you commence your critical lecture, not by combating the facts, and refuting the arguments of the Committee, but by an impeachment of their motives. "It cannot but be observed," you say, "with what partiality the Committee contrast the merits of Dod and Fitch, with those of Livingston and Fulton." Permit me however Sir, to doubt whether an observation of the kind was to be expected from any person not blinded by prejudice or bent on misrepresentation;—"aut ille deceptus aut alios decipere vult!" is the exclamation, which however severe, it naturally provokes. Wherein let me ask Sir, do the Committee oppose to each other, the respective merits of Fitch and Dod, and Livingston and Fulton? In what part of their Report is the contrast attempted? Demonstrate it, I beseech you. They declare indeed that in their opinion "the Steam boats built by Livingston and Fulton, are in substance the invention, of John Fitch;" but they no where intimate a preference of Fitch's claims, to those of Mr. Livingston, or of any other person. except on the ground of the



priority, both of his invention, and of his grant. They institute no comparison between Mr. Fulton's *mode* of propelling a boat by means of Steam, and Mr. Fitch's; according to the principles upon which the Committee proceeded, any such contrast or comparison was unnecessary. The difference in favour of Messrs. Livingston and Fulton's boats and machinery, might have been as manifest, as the superiority of the improved and finished mechanism of the modern Engines of Watt and Bolton, over the first rude essays of Savary or Newcomen; and yet the merit of invention might in the one case have been attributed to Fitch, with as much justice and propriety, as in the other, it had been to Captain Savary. The *substance* of the discovery, by the latter, consisted in the actual appropriation of Steam as a mechanical power; the invention of the former consisted *substantially*, in the application of the means by which the force of Steam is so appropriated, to a particular purpose in Mechanics. In this application of the Steam Engine to propel a vessel, it is not pretended that Mr. Fulton *preceded*, but that he *excelled*, all others.\* Now in regard to the Steam Engine, the improvement introduced by Mr. Watt of the separate condenser, gave to it, as Mr. Fulton himself has informed us, "its present degree of perfection, and rendered it so simple, familiar and useful, as to be adapted to the many important purposes to which it is now applied."† But Mr. Watt has never set

\* According to the authority appealed to, in proof of the superiority of Mr. Fulton's boats, "*They were the first that succeeded in a profitable way.*" Vide Life of Fulton, page 130, note.

† Vide Life of Fulton, page 111.



up a claim to the original discovery of the machine itself; nor questioned the merits of Newcomen, in his earlier, though less valuable, improvements; nor denied that *in substance*, “the Steam Engine,” was the invention patented to Savary:—although the Marquis of Worcester had previously discovered, the expansive force of Steam, and was the first to suggest its use, as a mechanical power. So with respect to “the *Steam Boat*,” the Abbé Arnald, may have been the first who “proposed to apply the power of a Steam Engine on board a Vessel.”\*—Fitch, from the evidence before the Committee, was the first who actually made the application, and obtained a patent for the discovery; and had it even been shewn, (which it was not), that Mr. Livingston, or Mr. Fulton had invented improvements upon his original plan; the Committee would still have been warranted in their conclusion,—that the Steam Boats produced by the united ingenuity of those gentlemen, were in *substance*, the same invention, which had been patented to Fitch.

“But it is evident,” you observe, “that the Committee were perfectly ignorant of the subject, on which they affected to give the house information, or they never would have given Dod credit for material and important improvements.”† Now, Sir, presuming the *perfect ignorance* of the Committee to be no more than equivalent to the *imperfect knowledge* of others, I would merely suggest in their defence, that they may well have been mistaken in their estimate of Dod’s improvement, and yet it

\* Life of Fulton, page 126.

† Ibid. p. 242.



would by no means follow, from that circumstance, that their opinions, upon all the questions submitted to them, were erroneous. You seem in your parenthesis to object to their omitting to state, that Dod had never seen Mr. Fulton's *boat*. Why this should be deemed material, I am at a loss to comprehend. You have yourself admitted that Mr. Fulton "made no pretensions as an inventor with respect to the *engine*;"\*—and it was not alleged that Dod had improved upon Mr. Fulton's *boat*; as the invention for which he had obtained his patent was an improvement upon the steam engine consisting, not as you have thought proper to represent, "of a parallel link and cranks," (which, for aught I know, may be "nearly as old as the first application of engines to produce a *rotary* motion,"†) but, as was proved by the exhibition of his patent, with the documents which accompanied it, and the model constructed according to his specification,—of a very simple, and easy mode of giving a perfect *rectilineal* motion to the piston rod, although it be attached to the end of the beam, which moves in a curve: and this improvement appeared from the evidence, to be equally important and material, whether the engine were used to propel a boat, "by means of cranks and paddles," according to the invention of Fitch, or to impel any other species of machinery; and equally applicable—where a *rotary* motion was required, or where it was not. Upon the subject of this improvement, the opinion of the committee is expressed without reference to the inventions of Mr. Fulton; although they deemed it proper to notice that Dod

\* Life of Fulton, p. 120.

† Ibid. p. 241.



had never seen Mr. Fulton's *specification*, in order to guard against the inference of his having availed himself of the *calculations*\* contained in it, concerning the requisite power of an engine, in relation to the size and structure of the boat. I presume, Sir, you will hardly insist that he should have made an improvement upon the Steam Engine, without having seen one.

And once for all, permit me to remind you, that the opinions of the Committee upon matters of fact, and upon questions of a technical nature, were not grounded upon their own knowledge or experience, but upon the evidence adduced before them; they boasted no attainments of Physical Science, nor skill in Experimental Philosophy, nor did they pretend to be conversant with the theory or practice of Mechanics. In most of the points submitted to them, were involved questions of Law, or considerations of public justice and expediency: Upon these—their decisions were guided by such lights as Education had afforded them, by natural Reason, and Common sense.—They may have been deceived, or they may have erred through “ignorance,” but certainly, not from partiality or precipitation. They felt that the integrity of their private characters, was responsible for the conscientious and reputable discharge, of their public trusts;—and although the irresistible temptations of interest, or the impulse of an unsubdued resentment, may have prompted you, Sir, to impute to them a disregard of their official duties, or incapacity to perform them,—your learned associates should

\* These calculations are *also* to be found, in Charnock's work on Marine Architecture; and in some of the Encyclopedias.



at least have hesitated, before they added their sanction to the calumny.

Unwearied in your endeavours to excite odium against the Committee, you still persevere in arraigning their conduct, and declare, "that part of their report stating that the recitals of the act of 1793, were untrue, to be much more unpardonable than the mistakes of ignorance:"\*—and in order to afford your charge the semblance of justice, you pervert their meaning, if not, their language. You make them "say it is untrue that Mr. Livingston was then (as those acts recite he had represented) in the possession of a mode of applying the steam engine to boats on new and advantageous principles, *because Fitch had previously obtained a patent.*"† And then you gravely ask, whether "it thence follows that Mr. Livingston might not have had a mode of applying the engines to boats different from Fitch's;" and whether "that mode might not have been new and advantageous."‡ Really, Sir, if you succeed in this attempt to render the passage you profess to quote, ridiculous, as well as odious, it is only by making it your own. What the Committee actually said, was expressed as follows: "that the suggestions contained in the act of the 27th of March, 1793, repealing the act granting the exclusive right, to use steam boats within this state, to John Fitch, were not true *in fact* the said Robert R. Livingston not being then possessor of a mode of applying the steam engine to propel a boat on new and advantageous principles;" "and the said John Fitch hav-

\* Life of Fulton, p. 242.

† Ibid.

‡ Ibid. p. 243.



“ing made a successful attempt for executing his  
 “plan of a steam boat, *and* having actually obtain-  
 “ed a patent therefor.” The plea of ignorance, I  
 conceive, Sir, will hardly be admitted as an excuse  
 for any of the “mistakes,” which abound in this  
 part of your volume, and the disengenuousness so  
 conspicuous in the present instance, is certainly  
 “much more unpardonable,” than any of your for-  
 mer misrepresentations. It has not even the merit  
 of originality.

It was by perverting the sense of this pas-  
 sage of the Report, that an insidious attempt  
 was made, at the time it was submitted to the  
 House, to counteract its effect, by appealing to  
 public sympathy, in behalf of the deceased Mr.  
 Livingston, and raising a clamour against the Com-  
 mittee. It was then attempted to enlist the feelings  
 of the Legislature, in favour of his representatives,  
 in very much the same strain of exclamation, as  
 that in which you have since endeavoured to excite  
 the indignation of your learned associates, and of  
 the Public. But on that occasion, the miserable ex-  
 pedient not only failed of its purpose, but recoiled  
 upon those who had resorted to it. It was clear to  
 all who were permitted calmly to reflect, that how-  
 ever boldly and plainly the Committee had expressed,  
 the opinions they were bound to give, they had ut-  
 tered no reproach against the veracity of Mr. Liv-  
 ington; and if any imputation had been cast upon  
 his memory, it was by the perversity of those, who in  
 the construction they chose to put upon the Report,  
 seemed to admit, (what the Committee had no where  
 intimated) that he had not at the time he applied for  
 his grant, the most perfect faith in the truth of the



representations upon which it was obtained. For my own part I rejoice in this opportunity to avow, that I never doubted Mr. Livingston's full belief in the efficacy of his favourite plan. Independently of my perfect confidence in his assertion of the fact, the large sums of money which he was known to have expended, in his repeated essays to reduce that scheme to practice, afforded to my mind the strongest evidence of his sincerity; and my reliance upon his truth and honour, induced me to conclude, that when he made the suggestion in regard to Mr. Fitch, he was, of course, ignorant of the "attempts" made by the latter, for executing that plan for which he had obtained an exclusive privilege. In point of fact, however, Mr. Livingston was mistaken, or misinformed; and the Committee were compelled officially and formally to declare, in the technical sense of the terms, that the suggestions, contained in the act of 1798, "were not true *in fact*." Yet, Sir, you have not scrupled to revive the exploded artifice.—On this point you say, "that the committee had no sort of testimony before them. They did not ask for testimony. They were content with the representations of the petitioner."\* No testimony! Sir? Had they not the Statute book? Does not the preamble of the act of March 1798, recite in the very words of a petition presented on behalf of Mr. Livingston and his associates, "that he had not been able to comply with the conditions of the act of the preceding session?" Did not those conditions render it obligatory upon him, to prove, within one year, that the principles upon which he proposed to construct

\* Life of Fulton, p. 243.



his boat, *were advantageous*,—by evidence of their successful operation in practice? Why did he in 1803 and in 1807, successively obtain further time, for the exhibition of that proof? And why to this day, has not a boat upon the principles of which he was possessed in the year 1798, been set in motion; if those principles were such as to entitle him to his Monopoly? Was it pretended, Sir, that his plan was even practicable? Had it not confessedly been abandoned? Did it not subsequently appear by Stoudinger's affidavit, that the experiment of Mr. Livingston, with horizontal wheels under water, had actually failed? And had not the Committee the benefit of admissions from yourself, as the Counsel of Mr. Fulton, which you have repeated as his Biographer?

You have uniformly contended, that if Mr. Fulton were not the *inventor* of the steam boat, yet that his peculiar mode of propelling vessels by means of steam, is the best, nay, the only advantageous one. This, Sir, is the scope and end of your argument upon this topic in your memoir. But you affirm, that Mr. Livingston's plan differed as much from Fitch's, *as Mr. Fulton's differed from Mr. Livingston's*. You admit, indeed, that "Mr. Livingston had done more than any other person towards establishing Steam boats," yet you remark, "he was not among those who founded, on their *fruitless attempts*, a claim to be the inventors of navigation by Steam:"\*—and you explicitly assert, in reference to the law of 1798, that "Mr. Livingston, immediately after the passing of this act,

\* Life of Fulton, p. 146-7.



“ built a boat of about thirty tons burden, which  
 “ was propelled by steam ; *but as she was incompetent*  
 “ *to fulfil the conditions of the law, she was abandoned,*  
 “ *and he for the time relinquished the project.*”\*

As to the experiment of Fitch, the evidence before the Committee consisted of contemporaneous printed accounts, of the performances of his boat—of the certificates of the late Dr. Rittenhouse and others, in full confirmation of its success ; and of the parol testimony of the late General Bloomfield of the Army of the United States, who attended the Committee in person, and stated under oath, that he had passed up and down the Delaware, as a passenger on board of Fitch’s Steam boat ;—that he considered the experiment to have succeeded, but that he had understood the plan, for continuing the boat upon the Delaware, had eventually failed, for want of encouragement ; that Fitch himself had afterwards gone to Europe in search of patronage, and there had died. The patent granted to Fitch, by the Government of the United States, and an authenticated drawing of his boat, were also produced. By a comparison of these, with the printed explanations from the sources I have mentioned, it appeared that the most material difference between Fitch’s boat, and that of Mr. Fulton was,—that in the one, the cranks were applied to paddles suspended perpendicularly from an elevated frame, and acting by an elliptical motion, upon the water ; and in the other,—to vertical wheels.†

\* Life of Fulton, p. 146.

† The whole of the documentary testimony was returned to Col. Ogden by the Committee, at his request, grounded upon its necessity



This Sir, was the proof submitted to the Committee *in your presence*,—notwithstanding you now declare that “they did not ask for testimony, and were content with the representations of the Petitioner.” But these assertions were not, it seems, sufficient to allay the feelings which had given birth to them. You indulge still further your vituperative spirit, and continue to give vent to it as follows; “and certainly,” you add, “there was not a member of the Committee who knew or pretended to know what Mr. Livingston’s method was; or if they did (you tell

for his defence in New-Jersey, where he apprehended an attack. It was designed to have inserted it in the Appendix; and that Gentleman was accordingly applied to, for copies of the papers, or for information where they could be found, or referred to. He has however declined to furnish either,—upon the ground of his present interest, under the state grant, and of his subsequent “stipulations,” with the representatives of Messrs. Livingston and Fulton. In a minute of the evidence before the Committee, I find noted the “Massachusetts Magazine” for the year 1790. But upon reference to the Copy of that Work in the Albany Library, which is probably the same which was produced before the Committee, several leaves appear to be torn from that number in which an account of Mr. Fitch’s boat is supposed to have been contained. Upon application at the Boston Athenæum,—the volume itself was missing. A Pamphlet was also referred to, by the description of “Fitch’s Reply to Rumsey.” The title of one corresponding with it, was found in the Catalogue of the New-York Society Library; but the Pamphlet itself was not to be found on the shelves. A Copy however, has since been procured from the Philadelphia Library, from which the certificates of Messrs. Rittenhouse, Ewing, and Ellicott, subjoined in the Appendix, have been extracted. A description and drawing of Fitch’s Steam boat, will be found in the “Columbian Magazine” for Dec. 1786, and a Letter respecting some of his experiments in the New-York Magazine of August 1790. Vide Appendix V.



\* your learned associates) we may judge how capable they were of comparing it with Fitch's, or any other plan—when we see them giving so much credit to Daniel Dod as an inventor, for his parallel links, and cranks.\* Language like this, Sir, may have been deemed suitable to the dignity of the occasion, it may have merited the “thanks” of those to whom, in the first instance, it was addressed; and they may have thought it fit for publication afterwards: But I feel confident, that every undeluded, candid, and impartial man will “judge” such language, more degrading to those who use, and those who condescend to approve of it,—than to those to whom it is applied. I should once have supposed it unworthy of you, Sir, and I shall always consider it undeserving any other notice from me.

Your remarks upon the bill recommended by the Committee, are not more reconcileable to candour, and justice, than your comments upon the Report. You assert positively, “that the law proposed by them was in effect an entire repeal of the exclusive grants of Messrs. Livingston and Fulton.”† But this representation is also founded upon a perversion of their language. The proposed bill (I take now your own statement of its substance), “declared that nothing in the act passed in favour of Livingston and Fulton, should be so construed as to affect the right which any person might have to use the invention of the Steam Boat, or any improvement thereon, which had been, or might thereafter, be patented under the Laws of the

\* Life of Fulton, p. 244.

† Ib. p. 245.



“United States; *provided* that in such use they did  
 “not interfere with any invention, or improvement  
 “lawfully secured by the prior acts or any of them.”  
 “This proviso,” you observe, “is a mere nullity. None  
 “of the acts referred to by it did secure, or even pre-  
 “tend to secure, any *invention*.” No. Sir, if they  
 secure any thing, it must be an *improvement*. Admit-  
 ting that the acts in question, lawfully secure to  
 Messrs. Livingston and Fulton, more than the use of an  
 original discovery;—admitting that they secure more  
 than the “*new and advantageous* mode of propelling  
 “boats by Steam,” of which Mr. Livingston was in pos-  
 session in the year 1793:—still the different and su-  
 perior mode subsequently introduced by Mr. Fulton;  
 must have been *new and advantageous*, and conse-  
 quently an *improvement*, or the conditions of the  
 grant would not, in that respect, have been complied  
 with. The leading topic and design of your publi-  
 cation, is to demonstrate the superior excellence of  
 Mr. Fulton’s plan, and the very term “*improvement*,” is  
 adopted by you, in reference to his patent, which you  
 affirm could not have been obtained, “without Mr.  
 “Fulton’s taking an oath that the *improvement* was  
 “solely his.”\* And yet the argument by which you  
 pretend to prove, that the bill reported by the Com-  
 mittee, was, in effect, a repeal of his exclusive  
 right, rests solely upon the suppression of this im-  
 portant word.

The Committee intended by the declaratory  
 clause of that bill, that every person, whether a  
 Citizen of this State or of any other of the United  
 States, claiming under a patent from Congress, for  
 any invention or improvement, different from Fitch’s,

\* Life of Fulton, p. 147.



should have been permitted to make an experiment upon our waters, without being subject to the forfeiture, and seizure, and loss of his boat, by the operation of Laws, which it had been confessed, were never intended to reach his case;—whilst the proviso should effectually protect the representatives of Messrs. Livingston and Fulton, in the possession of every right, lawfully vested in them, and reserve every judicial question relative to their privileges, for investigation and decision, in the proper tribunals. The Bill also contained a clause requiring security to be given, in all cases where an injunction was issued by the Chancellor, to answer in damages to the party whose boat might be seized or enjoined by Messrs. Livingston and Fulton, in case their title were not finally established.\* But when it was insisted at the bar of the House, that the State grant would prevail against a patent right;—when it appeared, that Mr. Fulton relied rather upon the efficiency of that grant, in its broadest interpretation, than upon the validity of his own patent;—when it was objected, that the regulation in regard to the security, was an abridgement of remedies existing antecedently to the statutes;—and when it was urged, that the Legislature, rather than pass the Bill in question, should repeal *in toto* the statutes creating the additional remedies;—that bill was withdrawn, and another substituted by the Committee in lieu of it.

At the suggestion of my friend and colleague Mr. Emott of Dutchess, at that time Speaker of the House, Mr. Fulton had indeed acquies-

\* Vide Appendix L.



ced in a bill for the particular relief of Col. Ogden.\* But at that time, Mr. Ogden, professed himself the public spirited vindicator of rights, common to every Citizen of the United States, as well as the assertor of his own individual claims; he seemed to regard his private interests as identified with those of the Community,—and he promptly rejected, this overture for a partial arrangement to his particular advantage. Whether he has persevered in that honourable resolution, or has since by private compromise succeeded “in grasping,” as you term it, “at the profits of Mr. Fulton, and “robbing his children of the only patrimony he has “left them,”†—you Sir, have the best means of determining.—Be this as it may; the particular claims of Col. Ogden, were regarded by the Committee, as moving causes for the interposition of the Legislature, principally, because more general demands upon public justice, and more enlarged considerations of public interest and policy, were involved and associated with them. The bill therefore which they substituted was, like the former, general in its nature and provisions; it touched nothing which by any reasonable construction, could be deemed a *right* vested in Messrs. Livingston and Fulton, but was confined strictly to a repeal of the extraordinary *remedies*, by which they were entrenched. It proposed simply to abrogate the forfeitures and penalties as created by the Act of 1808, and as extended and enforced by the Act of 1811; and least these remedies might, by any probability be judicially held a portion

\* Vide Appendix M.

† Life of Fulton, p. 167.



of the right itself—least this repeal might be judged an infringement upon those remedies to which the parties were entitled, antecedently to the statutes upon which it operated,—it was “provided that no-  
 “thing contained in the Bill should be so construed  
 “as to divest Messrs. Livingston and Fulton, their  
 “associates or representatives, of any rights lawfully  
 “secured to them, by either of the Acts repealed,  
 “or to prevent the Chancellor in the ordinary exer-  
 “cise of his power, from issuing or dissolving any  
 “injunction in relation to Steam boats on such terms  
 “as he might see fit.”\* And this Bill, I not only venture to affirm might have been passed consistently with the most scrupulous regard to public faith; but I undertake to prove, that public justice required that it should have become a Law.

I. That the proposed repeal of the statutes giving the forfeiture and other cumulative remedies to Messrs. Livingston and Fulton, was consistent with the faith of the State; or in other words, that the Legislature had the right to abrogate them.

It results conclusively from the reasoning of Mr. Ogden which I have already recapitulated, that the act of March 1798, is the foundation of the exclusive title at present possessed by the representatives of Messrs. Livingston and Fulton; notwithstanding it seems from the language used by Mr. Justice Yates, in delivering his opinion in the Court of Errors, to have been supposed, that a concession of *new* privileges had been made to Messrs. Livingston and Fulton, by the Statute passed in 1803. After observing that privileges similar to those, which had been

\* Vide Appendix N.



vested in Fitch, were granted to Mr. Livingston by the act of 1798, His Honour remarks, that "the same privilege was *granted* in 1803, to Messrs. Livingston and Fulton."\* The act of 1803, is indeed the first in which the name of Mr. Fulton occurs; but certainly that law conveys no new title distinct and separate from that which had previously been vested; *it extends* indeed, that which had already been granted to Mr. Livingston solely, so as to comprehend another person; it associates Mr. Fulton, with Mr. Livingston, in the enjoyment of privileges conferred in the first instance upon the latter separately; it *prolongs* the continuance of that original grant, and enlarges the time which had been prescribed for performance of the condition annexed to it; and it expressly defines the subjects upon which it is operative, to be "the rights, privileges and advantages granted to Robert R. Livingston, by the act of 1798:"—which after all can only be ascertained by reference to the law of 1787, in favour of John Fitch. But there is this marked distinction to be observed as to the terms of these two acts of March, 1798, and April 1803, that by the one, the pre-existing law is *repealed*, and privileges *similar* to those which had been vested in Fitch are "extended" to Mr. Livingston; and by the other the prior grant to Mr. Livingston is *prolonged*, and the *same* privileges are "extended" to Mr. Fulton in conjunction with him. But if it were even admitted, that a *new title* was conveyed by the act of 1803;—that Statute would yet be subject to the very same exception, as to granting what had already been disposed of, which

\* 9 Johnson's Reports, 559.



was raised against the act of 1798: for Fitch's patent was yet unexpired, and still subsisted in full force, at the time the new law was passed. The act of 1807, merely extended the time for exhibiting the proofs; and the act of 1808, as was contended by Col. Ogden, does not give a title *per se*, any more than the act of 1803; it *prolongs* the existence of the former grant, upon a new condition; and it again refers expressly to the former title. In short the Statutes now in force are all *pari materie*; according to the rules of law they must be construed together, and in point of fact, they are not intelligible if separated.

The first in order therefore, the act of March 1798, upon which all the rest depend, and to which they all mediately or immediately refer, is of course the foundation of the grant. This act gave no particular species of remedy, but left the party to seek his redress for injury at the Common Law. The act of 1808, however, superadded the penalty of forfeiture; and the Counsel associated with you, in the Court of Errors, and before the Committee, himself insisted, "that the rights of Mr. Livingston were valid before the Statute was passed, "that gave the forfeiture;"—that the "penalty was "a cumulative remedy;"—and that "it did not take away, and destroy the *right* and *remedy* which antecedently existed."\* The present Chief Justice also observed, "that the act of 1808, creating the "forfeiture, purports to be an act for the *further* encouragement of Steam Boats, which plainly shews "that the remedies therein provided, were intended "as cumulative, and in addition to those already ex-

\* 9 Johnson's Reports, 557.



“isting.”\* *Ex concessis* therefore, neither this forfeiture, nor the provisions to enforce it more effectually, contained in the act of 1811, form no part of the rights antecedently vested in Messrs. Livingston and Fulton, but are mere additional remedies given for its protection.

It would not, I presume, be contended in any other case, that the Legislature cannot, without a violation of public faith, alter, modify, or take away remedies, whether created by statute, or pre-existing at common law, for the maintenance of any right whatsoever; provided the party claiming it be left in the possession of adequate means to defend or enforce, its lawful exercise, and enjoyment. The remedy by *Distress*, although no part of the contract of lease, forms no inconsiderable item in the calculations of the Landlord who lets his house, or his farm, to a tenant, without other visible resource than his own industry, and the furniture, implements, and stock, which he brings with him upon the premises;—these are even considered by the Law, as pledges for the performance of the contract upon his part;—and yet, the Legislature have not hesitated to alter, modify, and curtail this remedy, at different periods; and they might unquestionably repeal this, or any other sanction upon which the Landlord might have relied, as a security for his rent, when he consented to part with the possession of his property—so that he be left in the enjoyment of legal means of redress, for the delinquency of his tenant. The Statute of “*Quia emptores*,”† took away the remedy by *Distress*, in all cases where

\* 9 Johns. Rep. 571.

† 18 Edw. 1.



a rent was reserved upon a grant in fee ; for by the operation of that ancient law, the grantor parting with the fee, is left without a reversion—and without a reversion there can be no *rent service*, to which species of rent, the remedy by *Distress* was incident. Hence the practice of introducing into modern conveyances in fee where rent is reserved, a clause of *Distress* upon the foot of a *rent charge*—as a part of the contract : And although it seems,\* that if such a rent were created at this day, without a power of *Distress*, it would be considered in England, as a *rent seck*, and so distrainable under the statute of 4. Geo. 2. yet that statute was not enacted for four hundred years after the former, and applies only to a very inconsiderable proportion of the cases, affected by the repeal. Subsequent statutes both in England, and in this country, have repeatedly varied and diminished, the objects upon which distresses, and executions were operative ; and the last act passed upon the subject in this State, renders in many instances, a resort either to a *Distress*, or an execution upon goods, in effect nugatory. What are all our insolvent laws, but so many instances of interference with the legal means, by which the rights of creditors, were previously protected and enforced ? And if the Legislature cannot consistently with a due regard to public faith, vary and annul the remedies, by which private rights are guarded ; are they not without power to abolish (as reason and humanity demand) THE LAWS AUTHORIZING IMPRISONMENT FOR DEBT ?

Presuming that I have conclusively established

\* Doug. 624.



the extraordinary remedies given to Messrs. Livingston and Fulton, to be no part of their vested rights, and therefore to be perfectly within the control of the Legislature; I shall now attempt to shew—

II. That public justice, as well as expediency, required, that the acts by which they were created, should, at all events, have been repealed.

We have seen that neither the act of 1798, which gave the exclusive right to Mr. Livingston, nor that of 1803, which included Mr. Fulton in the extension of the former grant, gave any particular species of remedy for its violation; but left the party to those means of redress for injury which are afforded them at common law. These are, 1st, The action of *Trespass on the case*; in which they would be entitled to recover such damages, as they might actually have sustained by a violation of their rights, to be assessed by a jury of their country, in equitable proportion to the injury, and upon a full consideration of all the circumstances attending it. 2d, From the decision of the Court of Errors on this same title, it seems that in cases where it is supposed no questions can arise in objection to it, that a Court of Equity will, upon the filing of a bill, grant an injunction against such as may attempt to infringe it;—and when all questions are settled in favour of those who claim the right, it is clear, that the Chancellor would decree a perpetual injunction, without reference to the forfeiture, or to the statutes which create and enforce it. Now to these ordinary remedies, the act of 1808 superadds the absolute and entire forfeiture of any boat moved by steam or fire, which shall be set in motion on the waters of



this State, without the license of those entitled to the exclusive privilege, although the value of a Steam boat is necessarily considerable, and the actual injury sustained by these persons, may be absolutely nothing. It is true that a similar forfeiture was given to Fitch by the act of 1787, but although the grant to Fitch was made upon the ground of his being the *inventor* of the Steam boat, yet I conceive it was equally unjust and impolitic that he should have been clothed with that remedy, as it extended in its application, beyond his proper discovery; and in both instances,—the creation of such a forfeiture, was at variance with the spirit of our Bill of Rights, which declares, in the language of MAGNA CHARTA, that “every amerciament shall be according to the quantity of the trespass.”\*

The impolicy of admitting a provision of this nature into our Statute book, may be conceived more clearly, if we reflect, that for twenty years, with the exception of one or two short intervals, during the earlier part of which period, Mr. Fitch was pursuing his enterprise, in another State, or in a foreign Country, and whilst Messrs. Livingston and Fulton, during the latter part of it, were engaged in their experiments upon the Seine; the waters of this State were shut against the essays, of any other ingenuity than their own. This circumstance may in some degree “season our admiration” at the delay which attended the art of Steam navigation in its progress to perfection.

The forfeiture under consideration is declared however, by the subsequent act of 1811, to accrue

\* Laws of New-York, sess. 1. c. 1. § 2. 1. N. R. Laws, 48.



instantaneously upon the entrance of a Steam boat within our jurisdiction, without the license of Messrs. Livingston and Fulton: The same remedies are declared to be given to them, both at Law and in Equity, for its recovery, "as if the same had been tortiously and wrongfully taken out of their possession:"—and it is rendered imperative upon the Court of Chancery, to seize and take it into safe keeping, until the determination of the suit,—without the exercise of any discretion, in regard to the terms, either of issuing, or dissolving, the injunction. So that the moment a boat has thus become forfeited, the representatives of Messrs. Livingston and Fulton—to whom an absolute discretion is entrusted as to the granting, or refusing of a license—may take possession of her *manu forti*,—without execution—without judgment—without trial—without process—and without any other Law—than this Statute. The intervention of a jury is dispensed with, and the party claiming possession of the right, is rendered sole Judge in his own cause, and invested with authority to execute his judgment, according to his own uncontrollable discretion. There may be cases in which the public revenues of a State, are guarded against fraud, by laws authorizing arbitrary seizures, but the agent to whose discretion those seizures are confided,—makes them at his peril; if he proceed beyond the strict warrant of the law, he is responsible in damages: but no other instance can be shewn where the powers of Government have been thus appropriated to the use of individuals. For here the highest judicial office of the State, is rendered ministerially subservient to the defence of



a private Monopoly. The seizure becomes a necessary act of the Court; and the parties at whose instance, and for whose benefit it is made, are saved from the consequences of that act, in case they fail in establishing their claim. To the opposite party, these consequences must inevitably prove ruinous—For a Citizen of the United States, whether he reside in this, or in a sister State, who enters that portion of the territory and jurisdiction of the Union, which is comprehended within our limits, with a steam boat,—claiming title to navigate her under an authority superior to that, from which the privilege of his antagonist is derived,—can only obtain a legal investigation of his right in our State Courts, by forfeiting a pledge of great value,—whether the decision be against him, or in his favour: The valuable pledge exacted from him is in its nature perishable, but should it happily survive a contest in Chancery, the act by which the propriety of his boat, is in effect transferred to others, contains no provision for its restoration, in the event of his success. This indeed, is closing the doors of Courts of Justice, and if it be not contrary to that fundamental Statute to which I have referred, I must confess my inability to conceive what can be deemed a violation of it. The Bill of Rights declares, in the homely, but energetic language of antiquity, that “Justice shall not be denied or deferred, and  
 “that no person shall lose his or her goods and  
 “chattels, unless he or she be duly brought to answer and be forejudged of the same by due course  
 “of law; and if any thing be done contrary to the



“ same, it shall be void in law and holden for none.”\* The Great Charter of England, from which our statute was transcribed, has ever been regarded in that country from which we derive our system of Jurisprudence, as the palladium of Civil Liberty, and the grand land-mark and security, of the rights of property. It was held in equal veneration, by the wisest and best man which this country has produced, as those parts of it, which I have quoted, were incorporated in the first and most important law, which was enacted under our State Government, and inserted in amendments which were made conditional to the adoption, of the Federal Constitution.

You have alleged, Sir, that “ these laws were passed to secure an honest fulfilment on the part of the State, of a solemn *contract* which it made with Messrs. Livingston and Fulton, that they should for a certain time, enjoy an exclusive privilege, on the faith of which they had pledged their fortunes.”† I trust I have already shewn that adequate means for their protection were previously at their command, but had they been left without remedy of any sort; were the penalties given them,—the only effectual sanctions that could have been devised, the *Legislature* had no power to barter the natural rights of their constituents, in exchange for any public benefit whatsoever, or to reward even Genius—at the expense of the Constitution. Suppose, Sir, a bounty in lands to have been bestowed upon some

\* Laws of N. York, sess. 1. ch. 1. § 5.

† Life of Fulton, p, 238.



Hero, who had relieved his Country from foreign invasion, or delivered her from domestic tyranny; and in order to render the reward a more effectual benefit, as well as a more honourable distinction, it should have been decreed, in the enthusiasm of the moment, that the man who presumed to commit the slightest trespass upon the domain thus ceded by the public gratitude, should incur the forfeiture, of his own estate: and not content with this; suppose the State, to relieve this benefactor from the perplexity and cases of litigation, should invest him with authority to take possession of the forfeited estate to his own use, without waiting for the "law's delay." But it afterwards occurs to his fellow Citizens,—either from reflection upon that natural tendency of power to corrupt the noblest minds, or from witnessing its transmission to less worthy successors,—that this authority was liable to gross abuse:—Doubts moreover arise, as to the legality of the grant, either, from a suspicion that the State, never owned the territory it had undertaken to convey, or that it had, previously, ceded it to another person; or it is even actually denied that a particular spot, upon which an alleged trespass was committed, is included with the boundaries of the grant. The forfeiture, it is perceived, may nevertheless be enforced under such circumstances as would preclude the injured party from obtaining either a restitution of his property, or redress for the injury which he had sustained from its seizure:—Would be deemed a violation of the faith of that State, to rescind this op-



pressive remedy, and ordain that thenceforth, even he

—————"qui  
Servavit trepidam flagranti ex æde Minervam,"

should be left to the protection of the same laws, by which the rights of the rest of the community, are defended and enforced?

Let us suppose an actual "*contract*," between the authorised agents of the State, on the one part, and on the other, an individual citizen, to whom, upon the payment of a valuable consideration into the Treasury, a Patent issues for the Land—Would his claim be stronger? And is there any thing in reason, propriety, or justice, to distinguish the case under consideration, from either of those which I have supposed? Yes, you answer, "there has been a solemn adjudication upon the "very points." Not upon all of them Sir; although I admit, that the successful parties in the case alluded to, may apply their remedies *ad libitum*, to cases not comprehended within the principles of that decision, as well as to cases not contemplated by the grant:—Two points only were decided by the Court of Errors, viz.

1st. That the Laws of this State vesting the exclusive right to Steam navigation, in Messrs. Livingston and Fulton, are constitutional and valid, in a case where no patent under the United States was set up against it; which, it was admitted, would have "prevailed, and the State Laws have given place to "the superior power of Congress."

2d. That Messrs. Livingston and Fulton, in order to protect themselves in the possession of their right, as above defined and qualified, were entitled to the



remedy by injunction at Common Law, notwithstanding the forfeiture given for that purpose by the Act of 1808.

The first point we have seen, can only be definitively settled, by the Supreme Court of the United States; and although Citizens of another State, may perhaps be entitled to remove a prosecution into the Federal Courts, yet to Citizens of our own State, all access to those tribunals is denied, except as appellants from the highest of the State Courts. From the second point decided by the Court of Errors, it follows most conclusively, that the cumulative remedies were unnecessary. But the following, among other points, have never been adjudicated at all.—

1st. Whether the act of 1798, is valid, notwithstanding the circumstances under which, the prior subsisting grant from the State to John Fitch, was repealed?

2d. Whether it is valid, notwithstanding the prior grant to Fitch, by Patent from the United States?

3d. Whether the Laws vesting the rights claimed by the representatives of Messrs. Livingston and Fulton, and those granting the cumulative remedies to guard it, exclude the use of Fitch's principle, of Steam Navigation; which after the expiration of his Patent, became the common property of all the citizens of the United States?

4th. Whether they exclude a Boat propelled upon a new principle,—patented to the Inventor, by the United States?

5th. Whether they prevent the use of a Coasting License, under the United States, from a port in another State?



6th. Whether they extend over the intermediate waters, between this, and another State?

These Sir, are certainly, fair questions, and an attempt to try them in our Courts of Law, ought no more to subject a person to an enormous penalty, in case of failure, than an unsuccessful effort to vindicate the possession of his farm, or his right to vote at an election, in case such laws had been enacted, as would draw in controversy the validity of his title, or the exercise of his franchise. Most assuredly, those laws ought to be repealed, which in their operation, preclude him from a trial—at any hazard. At least, such Sir, was the opinion of the Committee, and of the House to whom their Report was made;—for although “the result was” as you have stated,” that “the *Legislature* refused to repeal the prior law, “or to pass any act on the subject,”\* yet your account of the intermediate proceedings in the *Assembly*, favours a conclusion contrary to the facts. “The “Senate and Assembly” did not as you seem to suppose, “examine witnesses or hear the parties in “joint Session:”† but the Senate attended informally to hear the arguments of Counsel at the bar of the *Assembly*; and after this hearing, the Report was sanctioned by the House—the splendid eloquence of the Counsel at the bar, and the acrimonious effusions of the agents in *the lobby*,—to the contrary notwithstanding.

In the debate which took place in a Committee of the whole House upon this bill; the propriety

\* Life of Fulton, p. 246.

† Ibid.



of repealing the act of 1811, appeared to be universally conceded. The only important question upon which a division took place, was upon a motion to strike out that part of the proposed bill, which repealed the forfeiture given by the act of 1808. This motion was negatived; and although all who were in favour of striking out, voted afterwards against the clause, in which the provision to which they had objected was retained—yet the bill, finally *passed the Assembly*.\* It was subsequently rejected in the Senate by a bare majority.

The leading principles of the Report have since, however, received the sanction of two different select Committees of the House, upon recent applications—† in Reports drawn up by gentlemen older, and much more eminent in the profession of the Law, than myself:‡ And whatever means of persuasion may be used; whatever arts of intimidation may be attempted; whatever calumnies may be resorted to, when arguments have failed; be assured Sir, that these principles will in the end prevail. If you have full confidence in the right, why should you object to its investigation? Why should the representatives of Messrs. Livingston and Fulton as the “possessors or importers” of the Steam Boat, be defended in the enjoyment of exclusive privileges, by safeguards, which are denied to them as Patentees of Mr. Fulton’s inventions? If they believe their title from the State, unimpeachable, why should they *wish* to protect it from a scrutiny to which the dearest rights

\* Vide Appendix N.

† Vide Appendix O. P. S.

‡ Nathaniel Pendleton and Elisha Williams, Esquires. Vide Appendix Q. R. T.



of all other citizens of the same State, is in every instance liable?—I cannot but suspect the faith, that shrinks from trial.

Many of those who are now interested in the monopoly, once certainly avowed different sentiments; some were the first to deny the justice and legality of the grant:—others persevered in that denial, upon the very occasion which gives rise to this discussion, and the circumstances under which all were admitted to participate in its advantages, plainly evince, that the original proprietors rely for its protection, rather upon the strength of their association, than upon conviction of their right. You well know Sir, (although the public may not be generally aware of it,) that after the decree had been pronounced in that case to which I have so often had occasion to refer, the opponents of Messrs. Livingston and Fulton, contemplated an appeal to the Supreme Court of the United States, under a clause in the judiciary act of Congress, which authorizes a re-examination before that tribunal “of  
“a judgment or decree in any suit, in the highest  
“Court of Law or Equity in a State, where the va-  
“lidity of a Statute of, or an authority exercised un-  
“der any State is drawn in question, on the ground of  
“their being repugnant to the Constitution.” The opinion of eminent Counsel out of this State,\* recommended the procedure, and confident hopes of success were consequently entertained. A compromise however, was effected; in pursuance of which Messrs. Livingston and Fulton paid to the association against whom they had prevailed, a considerable sum of money upon a purchase of those boats, which had

\* The late Samuel Dexter, Esquire, of Boston.



already been declared forfeited to their use: and they gratuitously ceded to their opponents the exclusive privilege of steam navigation upon Lake Champlain. The prosecution of the appeal was of course abandoned.

After a more signal triumph over Col. Ogden, who upon his defeat here, was pursued and vanquished in his own territory, terms, almost as advantageous, were obtained by him; and that gentleman has since consented to "navigate his boat upon his ancient and accustomed ferry," under the banner of the monopoly. The "*Virtus — negatâ, tentat iter viâ,*" is followed in Horace, by

"*Est et fideli tuta silentio*

"*Merces. —————*"

I hope for the sake of Mr. Ogden, that the connexion is not merely poetical.

In the interval between the close of the Legislative campaign of 1814, and the commencement of the last, several individuals of this State, distinguished for professional talent, or political influence, have from time to time been admitted as co-partners in the establishment upon the Hudson. Amongst them are some gentlemen who were formerly interested in the hostile company; and in a Remonstrance drawn up by the eloquent lawyer, who on every occasion has been retained as the advocate of the exclusive privilege, the claims of those of the new associates whom he had formerly represented\* "as men who bestowed "on the construction of a Steam Boat, just as much "mathematical calculation and philosophical research, as in the purchase of a sack of wheat, or

\* Life of Fulton, p. 186, in note.



“a barrel of ashes,” are preferred to those of the original grantees;—the learned Counsel contending that the enalties, which were once admitted to be *cumulative remedies*, in Messrs. Livingston and Fulton, had by virtue of the transfer become vested rights in their assignees!

On the occasion to which I have alluded, when two separate Petitions had been presented to the Legislature, for the repeal of these Penal Statutes, upon new and (as to one of them) peculiarly formidable grounds,\*—the persons who now represent the interests of Messrs. Livingston and Fulton, sought no assistance from that auxiliary corps of Solicitors, who hover about the precincts of the Capitol; nor (except as to their Remonstrance) did they avail themselves of the aid of Counsel: they made no application to be heard at the Bar of the House, but were content to appear occasionally in person, within its walls.—That was sufficient;—a Bill for modifying the acts granting and enforcing the forfeiture, was eventually defeated in the Assembly. Whether a deliberate scheme has been systematically pursued, for extending the advantage of the exclusive privileges to certain men of wealth and influence amongst us, I will not undertake to say; but if such a plan, Sir, actually exist, and be steadily persevered in,—if it include the leaders of our great political parties,—the ablest Advocates at the Bar,—persons in authority—and men who are, or who expect to be, members of the different branches of the Government;—an influence may soon be united, powerful enough, not merely to prevent the repeal of the Sta-

\* Vide Appendix S.



tutes by which this monopoly is guarded; but to insure its renewal, at the expiration of the period to which it is at present limited.

Combinations of this description, however respectable the individuals who project them,—however justifiable the end for which they are formed,—and however honest the intentions of those of whom they are composed,—are injurious to the reputation of the State, subversive of the independence and purity of legislation, and dangerous to the existence of a Government founded, like ours, upon enlightened principles of freedom. They are in themselves calculated to awaken resentment, independently of any pre-existing jealousy as to the objects they have reference to; and I trust I may be permitted to observe, that men in public stations should remember, that their most durable, as well as honourable influence, springs from a general confidence in their integrity: should they render their offices subservient to views of private gain, or regulate their opinions by considerations of personal interest, their usefulness must soon be impaired, and in the end, utterly destroyed. With all due submission, I would ask, whether it would become those, who hold situations of peculiar responsibility and dignity, in the State,—those who are conspicuous for their professional talents, and for their ability to serve the public,—so far to lend themselves to the selfish purposes of others, as to subject their own characters to injurious suspicion? And in reference to the present subject, I would suggest to those, who are possessed of wealth, the impolicy of an example from them, which confounds



the distinction between laws passed to favour the accumulation of money, and those enacted for the security of property. I would respectfully remind them, that if *they* will not discriminate between the acts vesting their rights, and those granting their remedies,—others may not. Some future Legislature, indignant at their resistance to a judicial examination of their claim, may make an undistinguishing repeal of the whole. For myself, Sir, should it be my fortune to have a right to speak on such an occasion, I should oppose an interference with their vested rights, as strenuously as I have urged the repeal of those oppressive Statutes, by which not only the rights of Patentees,—but the common rights of our Citizens,—not only the ordinary rules of Justice,—but the fundamental principles of our Government,—are prostrated and sacrificed, that their Monopoly may be guarded. On such an occasion, I should still adhere to the principles of that Report, upon which you have animadverted with so much freedom;—principles, which, I trust, I have sufficiently explained, temperately defended, and successfully vindicated; and which would not, I am confident,—on such an occasion—be regarded with the same unrelenting and unjust severity.

I am,

Sir,

Your most obedient,

Humble servant,

W. A. DUER.

*Albany, Nov. 25th, 1817.*



## APPENDIX.

### A

*An Act for granting and securing to John Fitch the sole right and advantage of making and employing for a limited time the Steam Boat by him lately invented.*

Passed 19th of March, 1787.

WHEREAS John Fitch, of Bucks county, in the state of Pennsylvania, hath represented to the legislature of this state, that he hath constructed an easy and expeditious method of impelling boats through the water by the force of steam, praying that an act may pass, granting to him, his executors, administrators, and assigns, the sole and exclusive right of making, employing and navigating all boats impelled by the force of steam or fire, within the jurisdiction of this state, for a limited time: *Wherefore*, in order to promote and encourage so useful an improvement and discovery, and as a reward for his ingenuity, application, and diligence—

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That the said John Fitch, his heirs, executors, administrators, and assigns, shall be, and they are hereby vested with the sole and exclusive right and privilege of constructing, making, using, employing and navigating all and every species or kind of boats, or water craft, which may be urged or impelled through the water by the force of fire or steam, in all creeks, rivers, bays and waters whatsoever, within the territory and jurisdiction of this state, for and during the full end and term of fourteen years from and after the present session of the legislature.

II. *And be it further enacted by the authority aforesaid*, That if any person or persons whomsoever, without being properly authorised by him the said John Fitch, his heirs, executors or administrators, shall make, use, employ or navigate any boat or water craft, which shall or may be urged, impelled, forced or driven through the water by the force, power, or agency of fire or steam as aforesaid, within the territory or jurisdiction of this state, every



person or persons so offending against the tenor, true intent and meaning of this act, for each and every such offence, shall forfeit and pay unto the said John Fitch, his heirs, executors or administrators, or to such other person or persons, as he the said John Fitch, his heirs or assigns, shall authorise and empower for that purpose, the sum of one hundred pounds, to be recovered by action of debt, in any court of record within this state, whenever the same may be cognizable, with costs of suit; and shall also forfeit to him the said John Fitch, his heirs or assigns, all such boats or water craft, together with the steam engine, and all the appurtenances thereof, to be recovered in manner aforesaid, with costs of suit.

III. *Provided always, and be it further enacted by the authority aforesaid, That neither this act, nor any clause, matter, or thing therein contained shall be taken, deemed or construed to prohibit or prevent any person or persons from making, using, employing or navigating, within this state, any kind of boats or water craft heretofore invented or hereafter to be invented on any other principles, construction or model, which may be urged, impelled, or driven along through the water, by any other power, force, agency, or means, except fire or steam.*

## B

*An Act repealing an act, entitled "an act for granting and securing to John Fitch the sole right and advantage of making and employing the Steam Boat by him lately invented," and for other purposes.*

Passed March 27th, 1798.

Whereas it hath been suggested to the people of this state, represented in Senate and Assembly, that Robert R. Livingston is possessor of a mode of applying the Steam Engine to propel a boat on new and advantageous principles, but that he is deterred from carrying the same into effect by the existence of a law, entitled "an act for granting and securing to John Fitch the sole right and advantage of making and employing the steam boat by him lately invented, passed the nineteenth day of March, one thousand seven hundred and eighty-seven," as well as by the uncertainty and hazard of a very expensive experiment, unless he could be assured of the exclusive advantage of the same, if on trial it should be found to



succeed: *And whereas* it is further suggested, that the said John Fitch is either dead or hath withdrawn himself from this state, without having made any attempt in the space of more than ten years, for executing the plan for which he so obtained an exclusive privilege, whereby the same is justly forfeited: Therefore,

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly*, That the act aforesaid be and is hereby repealed; and to the end that Robert R. Livingston may be induced to proceed in an experiment which, if successful, promises important advantages to this state,

II. *Be it further enacted*, That privileges similar to those granted to the said John Fitch, in and by the before mentioned act, be and they are hereby extended to the said Robert for the term of twenty years from the passing of this act: *Provided nevertheless*, that the said Robert shall, within twelve months from the passing of this act, give such proof as shall satisfy the Governor, the Lieutenant-Governor, and the Surveyor General of this state, or a majority of them, of his having built a boat of at least twenty tons capacity, which is propelled by steam, and the mean of whose progress through the water with and against the ordinary current of Hudson's river taken together, shall not be less than four miles an hour, and shall at no time omit for the space of one year to have a boat of such construction plying between the cities of New-York and Albany.

## C

*At a Meeting of the Council of Revision, held at the City Hall of the city of Albany, on Friday the 23d day of March, 1798.*

## PRESENT—

His Excellency the GOVERNOR,

The Hon. { The CHIEF JUSTICE,  
Judge LEWIS,  
Judge BENSON.

Judge Benson, to whom was committed the Bill, entitled "an act repealing an act, entitled "an act for granting and securing to John Fitch the sole right and advantage of making and employing the Steam Boat by him lately invented, and for other purposes," reported certain objections thereto, which being duly considered, were approved of; and thereupon the Council object to



the said Bill as improper to become a Law. Because the grant of the privileges to Robert R. Livingston, intended by the Bill, supposes that the similar privileges which were granted to John Fitch by the act thereby to be repealed had become forfeited : whereas it doth not appear that the facts from which such forfeiture is to arise have been found in some due course of law.

JOHN JAY.

D

*An Act for continuing in force an act entitled "An Act repealing an act entitled 'An Act for granting and securing to John Fitch, the sole right and advantage of making and employing the Steam Boat by him lately invented,' and for other purposes."*

Passed 29th March, 1799.

WHEREAS Nicholas I. Roosevelt hath by his petition, set forth that in virtue of an act entitled "An Act repealing an act entitled 'An Act for granting and securing to John Fitch, the sole right and advantage of making and employing the Steam Boat by him lately invented,' and for other purposes," he hath together with his associates expended a very considerable sum of money in endeavouring to effect the objects of the said act, but that from various unavoidable accidents, he and his associates have not been able to comply with the conditions therein contained, though he has reason to hope that the same may be effected if sufficient time is for that purpose afforded, and praying that in consideration of their great expense, and the extreme utility of the object, no advantage may be taken of their non-compliance with the condition in the said law contained, but that the said law may be continued in force for twenty years from the first day of June next ; *Provided* the conditions therein contained are fulfilled within two years from the first day of June next ; which Petition appearing just and reasonable, and being agreed to by the person for whose benefit the said Act was passed.

*Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That the Act aforesaid, shall be and is hereby continued in force for twenty years from the first day of June next. Provided nevertheless, that the several conditions in the said Act contained, are complied with in manner as in and by the said Act is directed, within two years from the first day of June next.*



*And be it further enacted*, That Nicholas I. Roosevelt, and the several persons associated with him, be entitled to the privileges and benefits resulting from the said Act, in proportion to the advances they have heretofore made, and the shares they severally hold in the works already erected.

## E.

*An Act relative to a Steam Boat.*

Passed April 5th, 1803.

*Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the rights, privileges, and advantages, granted to Robert R. Livingston, in and by the act entitled, "An act repealing an act granting and securing to John Fitch the sole right and advantage of making and employing the Steam Boat, by him lately invented, and for other purposes," passed the twenty-seventh day of March, one thousand seven hundred and ninety-eight, be extended to Robert R. Livingston and Robert Fulton, for the term of twenty years from the passing of this act, and that the term for giving the necessary proof of the practicability of a boat of twenty tons capacity, being propelled by steam through the water, with and against the ordinary current of Hudson River, taken together, four miles an hour, be and the same is hereby extended to two years from the passing of this act.

## F.

*An Act to revive an Act, entitled "An act relative to a Steam Boat."*

Passed April 6th, 1807.

*Be it enacted by the People of the State of New-York, represented in Senate and Assembly*, That the act, entitled "An act relative to a steam boat," passed the fifth day of April, one thousand eight hundred and three, be and the same is hereby extended for the term of two years from the passing of this act, to exhibit the proofs therein required.



*An Act for the further encouragement of Steam Boats, on the Waters of this State, and for other purposes.*

Passed April 11th, 1808.

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That whenever Robert R. Livingston and Robert Fulton, and such persons as they may associate with them, shall establish one or more Steam Boats or vessels, other than that already established, they shall, for each and every such additional boat, be entitled to five years prolongation of their grant or contract with this State. *Provided nevertheless,* That the whole term of their exclusive privileges, shall not exceed thirty years after the passage of this act.

II. *And be it further enacted,* That no person or persons, without the license of the persons entitled to an exclusive right to navigate the waters of this state, with boats moved by steam or fire, or those holding a major part of the interest in such privilege, shall set in motion or navigate, upon the waters of this state, or within the jurisdiction thereof, any boat or vessel moved by steam or fire; and the said person or persons, so navigating with boats or vessels, moved by steam or fire, in contravention of the exclusive right of the said Robert R. Livingston and Robert Fulton, and their associates, or legal representatives, shall forfeit such boat, or boats and vessels, together with the engine, tackle, and apparel thereof, to the said Robert R. Livingston and Robert Fulton, and their associates.

III. *And be it further enacted,* That the penalties so incurred may be sued for and recovered, within any court of record of this state, having cognizance thereof.

IV. *And be it further enacted,* That if any persons shall combine for the purpose of injuring or destroying any boat, sloop or other vessel navigating the waters of this state; and if any persons shall wilfully, and with the express intention to destroy or injure such boat, sloop or vessel, and thereby put in danger the lives of the passengers, or people navigating such boat, sloop, or other vessel; the persons so combining, or the persons so wilfully attempting to injure or destroy such boat, sloop, or other vessel, shall respectively be considered guilty of a misdemeanor, and on conviction, shall be fined in a sum not exceeding two thousand



dollars, or imprisoned for a time not exceeding twelve months, or both, in discretion of the court before whom such conviction takes place.

## H.

*An Act for the more effectual enforcement of the Provisions contained in an Act, entitled "An Act for the further encouragement of Steam Boats on the Waters of this State, and for other purposes."*

Passed April 9th, 1811.

*Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the several forfeitures mentioned in the Act, entitled "An Act for the further encouragement of Steam Boats on the waters of this State, and for other purposes," passed the eleventh day of April, one thousand eight hundred and eight, shall be deemed to accrue on the day on which any boat or boats, moved by steam or fire, not navigating under the license of Robert R. Livingston and Robert Fulton, their associates or assigns, shall navigate any of the waters of this State, or those within its jurisdiction, in contravention of the said act; and that Robert R. Livingston and Robert Fulton, their associates and assigns, shall and may be entitled to the same remedy, both in law and equity, for the recovery of the said boat and engine, or boats and engines, tackle and apparel, as if the same had been tortiously and wrongfully taken out of their possession.

*And be it further enacted,* That when any writ, suit or action is brought for the recovery of such forfeitures, the defendant or defendants to such writ, suit, or action, the captain, mariners, and others employed in so navigating in contravention of the said law, shall be prohibited by writ of injunction from navigating with or employing the said boat or boats, engine or engines, or from removing the same or any part thereof, out of the jurisdiction of the court, or to any place than that which shall be directed for their safe keeping by the court, during the pendency of such suit or suits, action or actions, or after judgment shall be obtained, if such judgment shall be against the defendants, or the matter or thing forfeited.

*And be it further enacted,* That when the plaintiffs shall elect to sue out an injunction, the court granting the same shall impose upon them such rules as may appear just and proper, to



prevent unnecessary delays in bringing such suit to issue and trial. *Provided always*, That nothing in this act shall be deemed or construed to extend or apply to the two boats or vessels commonly called Steam boats, belonging to Hamilton Boyd, Isaiah Townsend, Robert R. Henry, and their associates, or to the captain, mariners, and others, employed in navigating the same, which boats or vessels were lately launched at the city of Albany; nor to the Steam boat which, during the last summer, plied on Lake Champlain, and is said to belong to James Winants, and his associates, or to the captain, mariners, or others employed in navigating the same; but in regard to the said three boats or vessels, the said Robert R. Livingston and Robert Fulton, and their associates or assigns, shall have and enjoy all the remedies heretofore provided in and by, or resulting from any former law or laws of this State, and the relative rights and remedies of the respective parties in relation to the three boats or vessels above mentioned, shall be and remain as if this act had not been passed.

## I.

*To the Honorable the Legislature of the State of New-York, the Memorial and Petition of Aaron Ogden, a Citizen of New-Jersey, most respectfully sheweth:—*

That on the application of Robert Fulton and the late Robert R. Livingston, Esq. sundry laws in *general terms*, and without saving *expressly*, the just rights of others, have been passed by the Legislature of the State of New-York, in virtue of which the persons above named, their executors, administrators or assigns, have claimed the sole right to navigate in Steam Boats, on all the waters of the said State, to the *entire exclusion* of all Steam Boats whatever, without any exception, not having a *license* granted by them.

And your Memorialist further shews, that after a youth devoted to public service, in the line of the Revolutionary Army, he at the expense of the earnings of a laborious profession both studied and practised thereafter, became interested in an Ancient Establishment for the transportation of passengers, merchandize, and marketing, from Elizabethtown Point, in the State of New-Jersey, to the city of New-York; and considering, that if such intercourse could be carried on by means of a Steam Boat, it



would tend as well to the public benefit as to the preservation of that accustomed proportion of business to your Memorialist, which would otherwise decrease, by reason of the running of Steam Boats from the City of New-York, to neighboring places in the State of New-Jersey: And, having received the opinion of three very eminent Counsel, in the city of New-York, that to run his Boat as aforesaid, would not contravene the laws which had been so enacted, he, your Memorialist, undertook to build a Steam Boat for his own use, on his ancient ferry, which on the side of the City of New-York, he held by a lease under the Corporation thereof: And for this purpose, he, your Memorialist, contracted with Mr. Cornelius Jerolaman, an experienced boat builder, living within the State of New-Jersey, for building within the said State, a boat of a convenient size and proportion, being about fourteen feet beam and seventy-five feet keel; and according to such form, in respect to her bottom, her bow and her run, as in his judgment would be best calculated for a common pettiauger, to sail before the wind.

And your Memorialist further agreed with Mr. Daniel Dod, a Citizen of the State of New-Jersey, that he in behalf of your Memorialist, should contract for a Steam Engine for the said Boat, of a twelve horse power, or thereabouts, to be employed in propelling his said Boat, according to a plan which had been previously submitted by the said Daniel Dod, which plan does not interfere with any invention, known to be secured by patent to any other person whatever, and contains an important improvement which was invented by him; and for which he has obtained a Patent under the Constitution and Laws of the United States, and has duly assigned to your Memorialist, a privilege to make use of the same; which improvement consists in a very simple and easy mode of giving a perfect rectilineal motion to the piston-rod, although it be attached to the end of the beam which moves in a curve.

And your Memorialist further shews, that he completed his Steam Boat, upon the plan and according to the instructions, so as aforesaid given; and on experiment, found his said Boat to have a speed through the water of more than six miles an hour; which velocity, as well as the comparatively great simplicity and cheapness of the plan, demonstrates both its great superiority and its essential difference.



And your Memorialist further shews, that he has obtained a license under the Laws and Constitution of the United States, to use in the coasting trade thereof, his said Steam Boat, for which license he paid to the revenue officer of the United States, the duty required by law, according to the tonnage of his boat.

And your Memorialist further shews, that before the adoption of the present Federal Constitution of the United States, John Fitch, now deceased, formerly a resident of the State of New-Jersey, constructed and used a Steam Boat, capable of being employed in useful purposes, who, as the inventor thereof, in the year 1786 and 1787, obtained concurrent laws from the several States of New-York and New-Jersey, for the exclusive use of boats moved by fire or steam on the waters of those States, or those within their jurisdictions respectively, for a term of years now expired: And that after the adoption of the said Federal Constitution, and under the same, to wit: in the year 1791, he, the said John Fitch, obtained a patent for his said invention, for a term of time, also now expired; whose administrator has granted and assigned to your Memorialist, all the benefit and rights which can or may accrue from such invention of the said John Fitch.

And your Memorialist further shews, that after he had made his contracts, and while he was building and constructing his Steam Boat, at his sole and great expense, a farther law was passed by the Legislature of the State of New-York, on the 9th day of April, 1811, entitled "An act for the more effectual enforcement of the provisions contained in an act, entitled "An act for the further encouragement of Steam Boats," &c. whereby it was further provided, that the running of a Steam Boat, in contravention of the laws referred to, would be equivalent to a condemnation and forfeiture, without any previous seizure or trial, and that the persons so as aforesaid named in the said laws, might immediately on such running of any such Steam Boat, have the same remedies as if such Boat had been wrongfully or tortiously taken from their possession; and that on the commencement of any suit therefor, it should be the duty of the Court, by process of injunction, to cause such boat to be taken and kept in custody until the determination of such suit; whereby your Memorialist, without trial on law or fact, and by a necessary act of Court, would in effect, by her natural decay, lose his boat and her profits without having any action for damages in case of false claims,



which last act has excluded your Memorialist from an opportunity of pleading at law the various defences which naturally arise from his case, herein before stated.

Your Memorialist, therefore, contrary to his original purpose, in order to avoid that ruin to himself and family, which was threatened to be brought upon them, preferred to run his boat from Elizabethtown Point to the City of Jersey, both places in the State of New-Jersey; and to make application to those *entrusted* with the power of this State to grant licenses, for such license under the authority of the same, to run his boat to the City of New-York; for which license he made the most liberal offers, and such as he most reasonably supposed, would, on that account, have been immediately accepted; but on the contrary, these offers, to his great surprise and astonishment, were either wholly rejected, or terms offered on the condition of submitting to the most unparalleled exactions.

Your Memorialist has, therefore, been thus *constrained*, most respectfully to address himself to the *justice* and *magnanimity* of a great and powerful State, and to pray, with all due submission, that it would, according to its unalienable right, by a further act, declare, that the laws herein before referred to, were not intended to appropriate to the grantees under the same, for steam navigation, the use of the waters lying intermediate between New-York and New-Jersey, to the exclusion, or in any manner to the prejudice of the Citizens of New-Jersey, in their free and common use of such waters, or so as to interrupt those mutual tolerations and that liberal policy, which should be reciprocated between neighboring and friendly States, in their intercourse with each other for their common benefit; or so as to abridge the rights of others, either as fundamentally established in the nature of things, or as derived from the Constitution and Laws of the United States: And containing also a further provision, that no process of injunction shall be issued by any Court in obedience of the laws aforesaid, until it shall have taken security in such way and such sum as to it may seem proper, for the payment to the party who may be injured thereby, for all losses and damages which may ensue therefrom, in case the suit should be discontinued, or judgment should pass for the Defendant, in any Court of Law or Equity in this State, or in the United States.

And your Memorialist as in duty bound will ever pray, &c.



K.

IN ASSEMBLY—TUESDAY, MARCH 8TH, 1814.

*The Committee to whom was referred the Memorial and Petition of  
Aaron Ogden, a Citizen of the State of New-Jersey,*

RESPECTFULLY REPORT :—

That the subject introduced for the consideration of the Legislature, by the Memorialist, being one of peculiar delicacy and importance, your Committee deemed it to be their duty, before they made up any opinion, or presented a Report to the House, not only to hear the proofs and allegations of the Memorialist, in support of the facts and prayer of his Memorial and Petition, but also, any persons who might have any thing to say in opposition to it. Your Committee, in consequence of a notice given by them to that effect, have been attended as well by the Memorialist, as by Counsel employed by the persons whose interests it was deemed might be materially affected, if the prayer of the Memorialist should be granted: And your Committee having heard the parties, beg leave to represent the following facts, viz :—

That on the 18th of March, in the year of our Lord, one thousand seven hundred and eighty-six, and before the adoption of the Federal Constitution, John Fitch, a citizen of the State of Pennsylvania, upon a representation to the then Legislature of New-Jersey, “ that he had constructed an easy, and expeditious method of impelling boats through the water by force “ of steam,” procured an act of the Legislature, granting to him, his heirs, executors, administrators, and assigns, “ the sole “ and exclusive right and privilege, of constructing, making, using, “ employing, and navigating, all and every species or kind of “ boats, or water-craft, which may be urged or impelled through “ the water by the force of fire or steam, in all creeks, rivers, “ bays and waters, whatsoever, within the territory and jurisdiction of the State of New-Jersey, for and during the full end “ and term of fourteen years, from and after” the then session of the Legislature: That on the 19th of March, one thousand seven hundred and eighty-seven, a similar act was passed by the Legislature of this State, vesting the same exclusive rights in the said John Fitch, within the territory and jurisdiction of the State of New-York.



That in the month of December, one thousand seven hundred and eighty-seven, the said John Fitch, with great labor and perseverance, completed a Steam Boat on the river Delaware, which worked against both wind and tide, with a very considerable degree of velocity, by the force of steam only.

That on the 26th of August, 1791, after the adoption of the Federal Constitution, the said John Fitch procured a patent from the United States, "for applying the force of steam to cranks and paddles for propelling a boat or vessel through the water," by which patent the United States granted to the said John Fitch, his heirs, administrators, or assigns, for the term of fourteen years, the sole and exclusive right, and liberty of making, using, and vending to others to be used, the said invention."

That on the 27th of March, 1798, before the expiration of the time in the law granting the exclusive privilege of navigating boats by steam, in the waters of this State, to the said John Fitch, and before the expiration of the patent right, vested in him by the United States, and after he had actually made and completed his Steam Boats, on the river Delaware, an act was passed by the Legislature of this State, entitled "an act repealing an act for granting and securing to John Fitch, the sole right and advantage of making and employing the steam boats by him lately invented—and for other purposes"—which said act was passed upon the suggestions of Robert R. Livingston, stating that he was the "possessor of a mode of applying a steam engine to propel a boat on new and advantageous principles," and that "the said John Fitch was either dead, or had withdrawn himself from this state without having made any attempt in the space of more than ten years, for executing the plan for which he had obtained an exclusive privilege, whereby the same was justly forfeited." Upon these suggestions, the Legislature repealed the act passed in favor of John Fitch, in 1787, and granted "privileges, similar to those granted to the said John Fitch, in and by the before-mentioned act," to the said Robert R. Livingston, for the term of twenty years from the passing of the act.

That on the 29th of March, 1799, the Legislature of this state, passed "an act for continuing in force, an act, entitled 'an act repealing an act entitled an act, for granting and securing to John Fitch, the sole right and advantage of making and employing



the Steam Boat by him lately invented,' and for other purposes." By which the act of March, 1798, was continued in force for twenty years from the first day of June, then next ensuing.

That the Legislature of this State, by a law passed on the fifth day of April, 1803, entitled "an act relative to a Steam Boat," enacted, "that the rights, privileges, and advantages, granted to Robert R. Livingston, in and by the act, entitled an act, repealing an act for granting and securing to John Fitch, the sole right and advantage of making and employing the Steam Boat by him lately invented, and for other purposes, should be extended to Robert R. Livingston and Robert Fulton, for the term of twenty years," from the passing of the act.

That on the 11th of April, 1808, the Legislature of this State passed "an act for the further encouragement of Steam Boats on the waters of this State, and for other purposes." By which it is enacted, that when Robert R. Livingston and Robert Fulton shall establish more boats, in addition to the one then established, they shall, for each additional boat, be entitled to five years prolongation of their grant or contract with this State; provided that the whole term of their exclusive privilege shall not exceed thirty years after the passing of the act: And the second section of this act declares, in substance, that if any persons, without a license from the said Livingston and Fulton, shall navigate the waters of this State with any boat or vessel, moved by steam or fire, they shall forfeit every such boat or vessel to the said Robert R. Livingston and Robert Fulton.

And your Committee further report, that the said Robert Fulton, on the 11th day of February, 1809, obtained from the government of the United States, a patent for a boat or vessel to be navigated by the power of a steam-engine, which he stated he had invented, and employed the summer previous in navigating between New-York and Albany.

That on the 9th of April, 1811, the Legislature of this State, passed "an act for the more effectual enforcement of the provisions contained in an act, entitled 'an act for the further encouragement of Steam Boats,' and for other purposes." By which, it is enacted, that the forfeitures mentioned in the act of April, 1808, shall be deemed to accrue on the day on which any boat or boats, moved by steam or fire without a license from



Robert R. Livingston and Robert Fulton, shall navigate any of the waters of this State, or those within its jurisdiction, and that Messrs. Livingston and Fulton shall, and may be entitled to the same remedy, both in law and equity, for the recovery of any such boat or boats, their engines, &c. as if the same had been tortiously and wrongfully taken out of their possession: And by which it is further enacted, that when any writ, suit or action is brought for the recovery of such forfeiture, the defendant or defendants, their servants, &c. employed in navigating the said boats, shall be prohibited from navigating with, or employing the said boat or boats, &c. or from removing the same, or any part thereof, out of the jurisdiction of the Court, during the pendency of such suit or suits.

And your Committee do further most respectfully report, that the said Aaron Ogden, the Memorialist, now is, and for several years last past, has been, the possessor and owner of an old and long established ferry from Elizabethtown Point, in the State of New-Jersey, to the City of New-York, and that he holds a lease of the said ferry, on the side of the said City, under the Corporation of the City of New-York, several years of which are unexpired. That the said Aaron Ogden, the Memorialist, in order to preserve to his ferry aforesaid, its ancient and accustomed proportion of business, in carrying passengers to and from Elizabethtown and New-York, did, in the Autumn of 1810, make a contract with a boat builder, in the State of New-Jersey, for the building of a boat of certain dimensions, of the form of a common pettiauger, for the purpose of making her a Steam Boat, to run or ply between Elizabethtown Point and New-York, upon the ancient ferry aforesaid. That in the Spring of the year 1810, he applied to one Daniel Dod, also a citizen of the State of New-Jersey, to make a steam engine of power sufficient to drive a boat of a proper size from Elizabethtown to New-York; and that the said Daniel Dod, did, thereupon, without having ever seen Mr. Fulton's patent, or specification, make a small steam engine as a model, in the making of which he invented some improvements (as your committee believe) of great importance, for which the said Daniel Dod, afterwards, on the 29th of November, 1811, obtained a patent from the United States.

And your Committee further report, that the said Aaron Ogden, the Memorialist, having according to his original contract



with the builder, had his said boat finished, and the steam engine constructed according to the old and well known plan of Watt and Bolton, improved by Dod, and adapted to wheels turned by a crank, the said boat was found to move through the water with a velocity at least equal, if not greater, than any of the boats built by the said Robert Fulton.

And your Committee further report, that the said Aaron Ogden, has the permission of the said Daniel Dod, to use his invention, patented to him, as aforesaid, and that the Memorialist has also an assignment from the administrator of John Fitch, for all the rights and privileges which the said John Fitch had, to employ his Steam Boat within the waters of the State of New-York, or elsewhere.

And your Committee do further report, that on the 3d day of November, 1813, an act was passed by the Legislature of New-Jersey, entitled "an act concerning Steam Boats," which, after reciting the act of that State, of March, 1786, granting the exclusive right of using boats navigated by steam to John Fitch, the assignment from his administrators to Aaron Ogden, and the patent granted to Daniel Dod, for his improvements and invention on the steam engine, refers to the several acts of the Legislature of this State, by which citizens of New-Jersey are excluded from coming within any waters within the jurisdiction of this state, with boats navigated by force of steam, except under a license from the said Robert R. Livingston and Robert Fulton, or their assigns: And then the said act vests in Aaron Ogden and Daniel Dod, "the sole and exclusive right and privilege of navigating the waters of that State, or those within its jurisdiction, by boats or vessels moved by fire or steam, for the term of two years from the passing of the said act, or until the Laws of the State of New-York shall be so modified as expressly to exclude from their operation all Steam Boats belonging to the citizens of the State of New-Jersey, navigating from a port in the one state to a port in the other, or until the act shall sooner be repealed and determined."

And your Committee further represent, that by the Constitution of the United States, power is given to Congress "to regulate commerce with foreign nations and among the several states:" That in pursuance of this power, Congress, on the 18th of Febru-



ary, 1793, passed an act, entitled "an act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same;" by which it is provided, that all vessels carrying on the coasting trade, shall be first enrolled and licensed by the Collector of the district in which she is owned. Your Committee report, that under the provisions of this act of Congress, the Steam Boat owned by the said Aaron Ogden, has been duly enrolled at the Collector's office at Perth-Amboy, in the State of New-Jersey, being the proper office under the said act, and regularly licensed to carry on the coasting trade under the Laws of the United States: And your Committee further report, that the said Steam Boat belonging to the said Aaron Ogden, in coming from Elizabethtown-Point, to New-York, passes over no waters but those which lie between this State and the State of New-Jersey.

These are the facts in relation to this subject, which have been submitted to your Committee, and which they have deemed material to be reported. They have stated them thus minutely, in order that the house might have a full knowledge of them, and be the better enabled to judge of the course which it may think proper to pursue in a matter so well worthy of its deliberate consideration.

Upon these facts, your Committee would beg leave to observe, that whilst the interests of the state require that the communication between the city of New-York and the neighboring States should be facilitated as much as possible, and that no unnecessary impediments should be thrown in the way of it by the Legislature; the honor of the State requires that its faith should be preserved, and its justice administered in courts open to every suiter who feels himself aggrieved. Your Committee have, therefore, very maturely reflected upon the subject referred to them, and, as the rules of the house require, that in their report, they should not only state the facts but declare their opinion upon them. In compliance with this rule, your committee beg leave further to state, that in their opinion, the Steam Boats built by Livingston and Fulton, are in substance the invention of John Fitch, patented to him in 1791; that during the term of his patent, he had the exclusive right to use the same in the United States, and that after the expiration of that term, the right to use them became common to all the citizens of the United States. That the im-



provements and inventions of Daniel Dod, on the steam engine, are important and material, and that the said Aaron Ogden has built his boat upon the principles invented by the said John Fitch, as improved by the said Daniel Dod.

And your Committee are further of opinion, that the suggestions contained in the act of the 27th of March, 1798, repealing the act granting the exclusive right to use Steam Boats within this State, to John Fitch, were not true in fact; the said Robert R. Livingston not being then possessor of a mode of applying a steam engine to propel a boat on new and advantageous principles; and the said John Fitch having made a successful attempt for executing his plan of a Steam Boat, and having actually attained a patent therefor.

Your Committee further represent that, as the Constitution of the United States vest Congress with the power (necessarily an exclusive one) to regulate commerce, it is at least questionable, whether the Legislature of this State have any power to interfere with, or prevent the navigation of a vessel in any of the waters of this State, and more especially in any waters lying between this and a neighboring State, which is navigated under a license obtained according to the Laws of the United States. And your Committee cannot hesitate to say, that in their opinion the act of this State of the 9th of April, 1811, in effect shuts the Courts of Justice of this State against any person who may be desirous of bringing to a legal test, the rights claimed by Livingston and Fulton, as by the provisions of that act, the defendant in any suit to be commenced by them, or those claiming under them, must lose his boat and his machinery, even if he should eventually gain his cause. This, in the opinion of your Committee, is manifestly unjust, and as this forms no part of the right of Livingston and Fulton, being only a new remedy given to them by that statute. Your Committee believe there can be no doubt of the right as well as the power of the Legislature, so to alter or modify that remedy, as to prevent its working manifest injustice, by shutting those Courts which in a free country should be left open to every individual.

Your Committee, therefore, humbly conceiving, that, under all the circumstances of the case submitted to them, some relief ought to be afforded to the Memorialist, have directed their Chairman to prepare and ask leave to present a bill, containing such pro-



visions as they are of opinion may be passed consistently with the faith, honor, and justice of the State.

All which is respectfully submitted,

By order of the Committee,

W. A. DUER, *Chairman.*

March 8th, 1814.

[For this Report see Assembly Journals of 1814, page 246, and for the decision of the House thereon, page 401, &c.]

# L

*An Act supplementary to the several acts heretofore passed concerning Steam Boats.*

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly,* That nothing contained in any of the said acts, shall be so construed as to affect the right which any person or persons may have to use the invention of the Steam Boat, or any improvement thereon, which have been or hereafter may be patented under the constitution and laws of the United States: *Provided always,* that in such use they do not interfere with any invention or improvement lawfully secured by the acts above mentioned, or by any of them.

II. *And be it further enacted,* That no process of injunction shall be issued in obedience to the said acts, or to any of them, by any Court of this State, until it shall have taken security in such manner and in such sum as it may seem proper, for the payment to the party, who may be injured thereby, for all losses and damages which may ensue therefrom, in case the suit should be discontinued, or judgment should pass for the defendants in any court of law or equity in this State, or of the United States.

STATE OF NEW-YORK, }

Assembly Chamber, Nov. 22, 1817. }

I do hereby certify, that the preceding is a true copy of the original Bill now on file in the Assembly Chamber.

AARON CLARK,

*Clerk of the Assembly.*



## M

IN ASSEMBLY—MARCH 28, 1814.

*Substitute offered by the Speaker, in lieu of the former bill and substitute concerning Steam Boats, under consideration in Committee of the whole.*

I. *Be it enacted by the people of the state of New-York, represented in Senate and Assembly,* That the second and third sections of the act, entitled "an act for the further encouragement of Steam Boats on the waters of this State, and for other purposes," passed the 11th day of April, 1808, and the second and third sections of the act, entitled "an act for the more effectual enforcement of the provisions contained in an act, entitled "an act for the further encouragement of Steam Boats on the waters of this state, and for other purposes," passed the 9th day of April, 1811, shall not apply or be held to extend to any Steam Boat, now owned or hereafter to be built by a citizen or citizens of the state of New-Jersey, employed in navigating the waters which lie between the shores of the said state and of this state, so long as such boat shall be confined to running or going from a port or place in the state of New-Jersey to another port or place in the said state.

II. *And be it further enacted,* That the said sections of the acts aforesaid shall be suspended in relation to any Steam Boat built, and in actual operation, owned by a citizen of New Jersey, until the                    day of                    until which time, nothing in the said several sections shall be deemed or construed to extend or apply to such Steam Boat, or the person or persons owning or navigating the same: *Provided,* such Steam Boat shall, in using the navigable waters of this state, be confined to the ferry between Elizabethtown, in the state of New-Jersey, and the city of New-York: *And provided also,* that nothing herein contained shall be held or construed to prevent the Chancellor, in the ordinary exercise of his powers, from issuing or dissolving any injunction in relation to such Steam Boat, on such terms as he may see fit.

## N.

IN ASSEMBLY—WEDNESDAY, MARCH 30TH, 1814.

The House resolved itself into a committee of the whole House, on the bill, entitled "an act supplementary to the several acts heretofore passed concerning Steam Boats," and after some time spent



thereon, Mr. Speaker resumed the chair, and Mr. Hatfield, from the said Committee, reported, that in proceeding on the said bill, the clause which had been agreed to be received as a substitute by the Committee, was again read, and is in the words following, to wit:—

*Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That the second and third sections of the act, entitled “an act for the further encouragement of Steam Boats on the waters of this State, and for other purposes,” passed the eleventh day of April, 1808, and the act, entitled “an act for the more effectual enforcement of the provisions contained in an act, entitled “an act for the further encouragement of Steam Boats on the waters of this State, and for other purposes,” passed the 9th day of April, 1811, be and the same are hereby repealed: Provided always, and it is hereby declared, That nothing herein before contained shall be so construed as to divest Robert R. Livingston and Robert Fulton, their associates, or legal representatives of any right lawfully secured to them by either of the said acts: Provided also, That nothing herein contained shall be held or construed to prevent the Chancellor, in the ordinary exercise of his powers, from issuing or dissolving any injunction in relation to such Steam Boats, on such terms as he may see fit.*

That Mr. Ross made a motion, that the Committee should agree to expunge from the said clause the following words, to wit: “the second and third sections of the act, entitled “an act for the further encouragement of Steam Boats on the waters of this State, and for other purposes,” passed the 11th day of April, 1808.”

That debates were had on the said motion, and the question having been put whether the Committee would agree thereto, it passed in the negative.

That the yeas and nays were called for by Mr. Duer, seconded by Mr. Palmer, and were as follows, to wit:

For the negative, 51.

For the affirmative, 43.

That Mr. Coles made a motion, that the Committee should agree to insert after the word “repealed,” in the 9th line of the said clause, the following words, to wit:

“So far as relates to the waters lying and being between this State and another State.”

That the question having been put, whether the Committee would agree to the said motion, it passed in the negative.



That the yeas and nays were called for by Mr. Coles, seconded by Mr. I. Smith, and were as follows, to wit :

For the negative, 56.

For the affirmative, 36.

That the question was then put on the said clause, and it was carried in the affirmative.

That the yeas and nays were called for by Mr. Palmer, seconded by Mr. Winne, and were as follows, to wit :

For the affirmative, 48.

For the negative, 44.

Mr. Hatfield further reported, that after the Committee had gone through the bill, made amendments, altered the title to "an act to repeal in part the several acts therein mentioned, concerning Steam Boats," the question was put, whether the Committee would agree to the whole bill as amended.

And it was carried in the affirmative.

That the yeas and nays were called for by Mr. Palmer, seconded by Mr. Furman, and were as follows, to wit :

For the affirmative, 49.

For the negative, 42.

Which he was directed to report to the House, and he read the report in his place, and delivered the same in at the table, where it was again read and agreed to by the House.

*Ordered*, That the bill be engrossed.

#### FOUR O'CLOCK, P. M.

The engrossed bill, entitled "an act to repeal in part the several acts therein mentioned, concerning Steam Boats, was read the third time.

*Resolved*, That the bill do pass.

O

*To the Honorable the Legislature of the State of New-York, in Senate and Assembly convened, the Petition of Joseph Hawkins, of the city of Troy,*

RESPECTFULLY SHEWETH—

That your Petitioner is the inventor of a new method of generating steam, and of applying it to the propelling of boats and machinery, materially different from any method and application



heretofore in use, for which he has obtained a patent under the Constitution and Laws of the United States. The originality of your Petitioner's invention, is corroborated by his having for the last sixteen years been deprived of sight; and its practical usefulness has been demonstrated by its successful application to machinery upon the land—but notwithstanding the rights secured to your Petitioner by his patent, he is prevented from applying his discovery, to the propelling of Steam Boats upon the waters within this State, by certain laws now in force, and which he humbly insists, ought, upon every principle of equal justice and liberal policy, to be repealed.

Your Petitioner further respectfully represents, That before the adoption of the Constitution of the United States, to wit: on the 19th of March, 1787, the Legislature of this State passed an act for granting and securing to John Fitch, late of the State of Pennsylvania, now deceased, the sole right and advantage of using and employing upon the waters of this State "*The Steam Boat*," by him then lately invented, for the term of fourteen years; and prohibiting any other person or persons, unless authorised by him, from navigating the said waters with boats propelled by the agency of steam or fire, during that period: That after the adoption of the said Constitution, and before the expiration of the said grant to Fitch, to wit: on the 27th of March, 1798, a law was passed repealing the said act of 1787, and declaring, that privileges similar to those granted to John Fitch, should be and thereby were extended upon certain conditions, to Robert R. Livingston, for the term of twenty years: That on the 5th of April, 1803, the Legislature passed "an act relative to a Steam Boat," by which the rights, privileges, and advantages granted to Robert R. Livingston, in and by the act above mentioned, were extended upon similar conditions to Robert R. Livingston and Robert Fulton, for the term of twenty years; which last mentioned act, having been suffered to expire by a failure in the performing of the conditions upon which it had been granted—was subsequently revived by a law passed for that purpose on the 6th of April, 1807, and the term for the performance of the conditions extended for two years longer. That on the 11th day of April, 1808, another act was passed by the Legislature for extending the period of the grant to the said Livingston and Fulton in effect for thirty years—and by the second section of this law it is enacted, that no person or persons, without the license of the parties entitled to the



exclusive right to navigate the waters of this state by boats moved by steam or fire, or those holding a major part of the interest of such privilege, should set in motion or navigate upon the waters of this state or within the jurisdiction thereof, any boat or vessel moved by steam or fire; and the person or persons navigating in contravention of the exclusive right of the said Livingston and Fulton, and their associates and legal representatives, *should forfeit such boat or boats, together with the engines, tackle, and apparel thereof, to the said Livingston and Fulton, and their associates.*

That on the 9th of April, 1811, the legislature of this state passed an act entitled "An act for the more effectual enforcement of the provisions contained in an act entitled "An Act for the further encouragement of Steam-boats, and for other purposes," whereby it is enacted, that the several forfeitures mentioned in the act for the further encouragement of Steam Boats, passed the 11th day of April, 1808, shall be deemed to accrue on the day on which any boat or boats moved by steam or fire, not navigating under the license of Robert R. Livingston and Robert Fulton, their associates and assigns, shall navigate any of the waters of this State, or those within its jurisdiction, in contravention of the said act: And that the said Robert R. Livingston and Robert Fulton, their associates and assigns, shall and may be entitled to the same remedy both in law and equity for the recovery of such boat, with her engine, tackle, and apparel, as if the same had been tortiously and wrongfully taken out of their possession.

And further, that when any writ, suit or action is brought for the recovery of such forfeitures, the defendant or defendants to such suit or action, the captains, mariners, and other persons employed in so navigating any such boat or boats, in contravention of the said act, shall be prohibited by writ of injunction, from navigating with or employing such boat or boats, engine or engines, or from removing the same or any part thereof, out of the jurisdiction of the said Court, or to any other place than that which shall be directed for their safe keeping by the Court, during the pendency of such suit, or after judgment shall be obtained, if such judgment shall be against the defendants, or the matter of thing shall be forfeited.

And your Petitioner further respectfully sheweth, that it is neither his object nor desire, in this appeal to the justice and magnanimity of the Legislature, to call in question any right legally



vested in the representatives of Robert R. Livingston and Robert Fulton; it is nevertheless his earnest wish to be permitted to bring his own rights to a legal investigation without incurring penalties which would insure his ruin were he to make the experiment, and forfeitures which would involve the destruction of his property were he to succeed in it. The *remedies* given to the representatives of Livingston and Fulton, by the acts of the 11th of April, 1808, and of the 9th of April, 1811, form, as your Petitioner humbly conceives, no part of their *right*, whilst they effectually close the Courts of Justice against your Petitioner. To maintain his claims under his patent, and to introduce into full operation within this State, to his own emolument and the public benefit, the invention it secures to him, your Petitioner is well aware, that he must, at all events, during the existence of the monopoly vested in the representatives of Livingston and Fulton, be liable to arrests and seizures, to protracted and expensive litigation; in order to assert his right to enjoy the advantages of his own discovery, it is necessary, in the first instance, that he should adventure upon the waters within this State, a boat propelled by steam, according to the method and application for which he has obtained an exclusive privilege from the General Government; but from this he is precluded by penalties and forfeitures which subject him to the loss of his boat, before the controversy could be determined, and leave him without redress, even should that controversy terminate in his favour. For this inevitable consequence of a seizure under the oppressive statutes alluded to, the representatives of Livingston and Fulton would not be bound to indemnify your Petitioner; whilst the law furnishes *them* with ample means to guard against injuries, and recover damages, which *they* might sustain, independently of cumulative remedies, which can only be requisite for the protection of their rights, upon the supposition that those rights are to be protected from all judicial scrutiny.

Your petitioner therefore humbly prays, that an act may be passed for the repeal of the second section of an act entitled an act for the further encouragement of steam boats on the waters of this state, and for other purposes, passed the 11th day of April, 1808, and also for the repeal of an act, entitled "an act for the more effectual enforcement of the provisions contained in an act entitled, an act for the encouragement of steam boats on the waters of this state, and for other purposes." passed the 9th day of April, 1811.—And that your honourable body will extend to him



such further and other relief as the nature of his case and the public interests may seem to require. Upon the wisdom and justice of the Legislature does your petitioner confidently rely. He trusts to them to devise and adopt those measures which may best enable him to maintain that fair and equal competition, before the public tribunals and in the public favour, which the nature of our government, and the spirit of our laws, assure to every citizen of our free and happy country.

JOSEPH HAWKINS.

*Albany, January, 1817.*

P

*To the Honourable the Legislature of the State of New-York, in Senate and Assembly convened.*

The Petition of the Subscribers, Merchants and Traders of the City of Albany,

*Respectfully Sheweth—*

That your petitioners feel deeply interested that the navigation of Hudson's River should be opened to the fair and equal competition of all who, by their skill and ingenuity, are capable of devising new inventions for propelling vessels by means of steam or fire. They have long had reason to regret that the persons who first succeeded in bringing Steam boats into practical use, upon the waters within this state, should not have been rewarded for their perseverance in some mode more consistent with the rights of individuals, and with the interests of the community, than that which, as your petitioners believe, was hastily and unadvisedly adopted.

The exclusive right to navigate by means of steam, claimed under certain laws of this state by the representatives of Robert R. Livingston and Robert Fulton, not only prevents the introduction of the new discoveries which genius and experience may since have suggested to others, but wholly deprives the public of the advantages of that free and unrestrained competition which springs from the true principles of political economy, and invigorates, where it is suffered to prevail, every branch of industry and commerce. The impolicy and injustice of the principle of these laws afforded grounds to the Council of Revision to object to its adoption, although it was finally passed by the other branches of the legislature, and the constitutionality of all of them has been re-



peatedly questioned by some of the most enlightened jurists of other states, notwithstanding it has been affirmed by a decision of our Superior Courts : but, it is still doubted by some amongst the most liberal and best informed of our own citizens, whether the claims of an individual State, to grant exclusive privileges, and to interdict a vessel bearing a license under the revenue laws of the Union, from navigating any of the waters within this State, communicating with the ocean, are to be reconciled with the powers vested by the Federal Constitution in the Congress "to secure to "inventors the exclusive right to their discoveries," and "to regulate commerce with foreign nations, and among the several "states." These questions have never yet been decided in the Federal Courts, where alone they can finally be settled.—And by the operation of an act passed by the Legislature of this State, on the 11th of April, 1808, and of another act passed on the 9th of April, 1811, it appears to your petitioners, that insurmountable obstacles are interposed to raising those important points in any case arising in this state, until these laws shall be repealed.

By the second section of the act of 1808, the absolute forfeiture is given of any boat moved by steam or fire, which shall attempt to navigate the waters of this state, without a license from the representatives of Messrs. Livingston and Fulton, although the value of such boats must necessarily be great, and the actual damage which they may have sustained may be merely nominal.—And by the act of 1811, this forfeiture is declared to accrue upon the day in which the attempt so to navigate without a license, shall first be made, and from that period the propriety of the boat is transferred to the representatives of Messrs. Livingston and Fulton, and their associates, by way of summary execution ; in the first instance—before judgment—before trial—in direct violation, as your petitioners conceive, of the bill of rights of the people of this state ; which declares that "no person shall lose his goods or chattels, unless he be duly brought to answer, and be forejudged of the same, by due course of law."

Your petitioners, therefore, humbly pray that the second section of the act entitled "An act for the further encouragement of steam boats on the waters of this state, and for other purposes," passed the 11th of April, 1808 ; and the act entitled "An act for the more effectual enforcement of the provisions contained in an act entitled 'An act for the further encouragement of steam



boats," &c. passed the 9th of April, 1811, may be repealed, to the end that any person claiming to have a right secured to him by patent under the constitution and laws of the United States, as the inventor of a new and improved method of applying steam or fire to the propelling of a vessel, and navigating such vessel under a license from a collector of the revenue, by virtue of the same constitution and laws, may have the opportunity (which these acts deny to him) of bringing to a legal test, the rights claimed by the representatives of Messrs. Livingston and Fulton, under the former acts vesting in them their exclusive rights, and which, in case this opportunity be granted, your petitioners are content may still remain in force.

And your petitioners, as in duty bound will ever pray.

*Albany, January 18, 1817.*

Q

IN ASSEMBLY—JANUARY 25, 1817.

*The Committee to whom was referred the Petition of Joseph Hawkins, of Troy, and other Petitions, relating to Steam Boats,*

**RESPECTFULLY REPORT—**

That the said Joseph Hawkins states himself to be the inventor of a new and useful mode of generating steam, for the exclusive use of which he has obtained a patent under the laws of the United States; that he is deterred from availing himself of one of the most beneficial modes of using his patent right, that of navigating boats by steam, in consequence of the penal provisions of the acts of the Legislature of this state, of the 11th day of April, 1808, and of the 9th day of April, 1811, for securing the exclusive privileges previously granted to Robert R. Livingston and Robert Fulton.

The petitioner has exhibited to your committee a patent for the exclusive use of certain modes of generating and applying steam therein described, exciting strong hopes of increased utility from the simplicity of the construction of its machinery, and the incomparable advantages in point of economy, while its propelling powers are not diminished, and prays for a repeal of the penal provisions mentioned in those statutes.

Your committee, after bestowing upon this subject that attentive consideration its importance merits, find that on the 19th of



March, 1787, John Fitch, representing himself as the inventor of a new and highly beneficial mode of propelling boats through the water by fire or steam, and upon his application an act was passed vesting in him, his heirs, &c. the sole and exclusive right of making, using or vending boats or craft propelled through the water by steam or fire, on all the waters within the jurisdiction of this state, for fourteen years from the passing of that act ; and it was thereby also enacted, that if any person should infringe the said privilege, he should forfeit 100*l.* to be recovered by action of debt, and that all boats, engines, &c. which should be navigated by steam or fire in contravention of such privilege, should be forfeited to the said John Fitch and be recovered in manner aforesaid.

That on the 27th March, 1798, an act was passed, enacting, that it had been represented that Robert R. Livingston was possessed of a mode of applying a steam engine to propel a boat on new and advantageous principles, but that he was deterred from carrying the same into effect, by the existence of the said act in favour of John Fitch, as well as by the uncertainty and hazard of a very expensive experiment, unless he could be assured of the exclusive advantage of the same, if on trial it should be found to succeed ; and that it was further suggested, that the said John Fitch was either dead or had withdrawn himself from this State, without having made any attempt in the space of more than ten years, for executing the plan for which he so obtained an exclusive privilege, whereby the same was justly forfeited ; and, therefore, the said act in favour of John Fitch was repealed, and privileges similar to those that had been granted to him were extended to the said Robert R. Livingston for twenty years from the passing of this act ; provided he should within twelve months, prove that he had built a boat of at least twenty tons capacity, that should be propelled by steam at the mean rate of four miles per hour, and should not omit for one year to have such boat plying between New-York and Albany.

This act was objected to by the Council of Revision, because it did not appear that the forfeiture of John Fitch's right therein referred to, had been found in some due course of law ; but it passed notwithstanding this objection.

That on the 5th of April, 1803, an act passed extending the last mentioned act to Robert R. Livingston and Robert Fulton, for twenty years from the passing of this act, allowing two years for



giving the proof therein required, and the time for exhibiting this proof was *further* extended for two years by an act passed the 6th of April, 1807 : That Robert R. Livingston and Robert Fulton established their first Steam boat, called the *North River*, and she plied between New-York and Albany in the summer of 1807, with the velocity required as the condition of their grant, whereby their exclusive privilege, depending on the performance of that condition, became absolute.

That on the 11th of April, 1808, an act passed, granting to Robert R. Livingston and Robert Fulton, in addition to their previous exclusive privileges, five years for every additional boat (other than the one already completed) which they should establish, provided that the whole term of their grant should not exceed thirty years. The same act declares, that those who should infringe the exclusive right of the grantees given by those statutes, should forfeit such boats, engines, &c. as had been navigated on the waters of this state in contravention thereof.

That on the 9th day of April, 1811, an act was passed, declaring that the forfeitures given by the last mentioned act should be deemed to have accrued on the day on which such boats should navigate by steam or fire, any of the waters of this state, or those within its jurisdiction, in contravention of the said act, and that the grantees should have the like remedy to recover such boats, engines, &c. as if the same had been tortiously and wrongfully taken out of their possession.

Also, that when any suit should be commenced to recover the said forfeitures, an injunction should issue to prevent the said boats from being navigated or removed out of the jurisdiction of the court, during the pendency of the suit, or after judgment, if such judgment shall be against the defendant.

Your committee cannot forbear to remark, that the extension of the exclusive privilege of the grantees by the act of 1808, to five years for each additional boat that should thereafter be established, amounting, in effect, to the addition of fifteen years, seems to have been nearly, if not entirely, gratuitous on the part of the state. The experiment had been made the preceding year with complete success. The building an additional boat or boats, the alleged consideration, became necessary to enable the grantees to obtain the advantages of the privilege already granted. It was then ascertained that the profits would be immense, and that they could only be obtained by additional boats. Upon what grounds



of justice or policy, the state, after having relinquished twenty years of the benefits of this invention to the inventors as a compensation therefor, which they had themselves stipulated for and been satisfied with, should, without any new benefit or discovery, voluntarily relinquish to the grantees fifteen years more than they had asked for, your committee are not able to perceive.

Nevertheless, the legislature who passed that law had sufficient motives to induce them to do so ; and the committee are of opinion the public faith requires, that no act should be done to impair the right the grantees acquired by the performance of the condition upon which the extended privilege was to vest.

How far the forfeiture contained in that act may be considered as making part of the privilege, is doubtful, but as the same forfeiture was originally provided in favour of John Fitch, and as it does not appear unreasonable in itself, your committee are of opinion it ought not to be repealed.

But your committee are of opinion, that the prohibitory and penal provisions of the act of 1811, do not form any part of the compact between the state and the grantees, but that they are clearly civil remedies, which the legislature, at that time, thought it proper and expedient to adopt, and which every succeeding legislature may in their wisdom repeal, amend, or modify, as justice and sound policy may require.

Your committee beg leave further to state, that it is doubted by many well informed persons in this and other states, whether the laws of this state, granting to Robert R. Livingston and Robert Fulton, the exclusive privilege of navigating boats, by steam, in all the waters within its territory and jurisdiction, can constitutionally exclude those vessels so navigated, which may come within its navigable waters under the protection of the law of nations or of the United States ; or preclude those from the unrestrained use of their patent rights whose industry and genius have enabled them to make new and important discoveries in those regions of invention, in which the talents of the grantees have been so honourably and successfully exerted.

If any rights exist in favour of those who may navigate the waters within our jurisdiction, notwithstanding our statutes are left unimpaired, yet no principle of good faith requires, nor does policy permit, that we should adopt or continue severe and unusual penalties, to terrify them from the exertions of their rights, whatever they may be, in the ordinary tribunals.



Your committee are of opinion, that that part of the act of 1811, declaring that the forfeited boats should become vested in the grantees, previous to any trial or judgment upon the merits, and even, perhaps, if those merits should be decided against them, is a departure from all the sound and universally received maxims of civil jurisprudence, adopted by all enlightened nations, and is repugnant to every principle of natural justice, in as much as it condemns without a hearing, and transfers the property without any previous trial or judgment.

Although it may in some instances be proper to restrain the acts of litigating parties, by injunction previous to any trial or judgment, yet as it does in some degree prejudice the case, and is liable to abuse, it ought to be applied only to prominent cases of irreparable mischief.

Much loss often ensues upon the granting an injunction, and as it is the act of the court, it admits of no claim for compensation, and thus may be the cause of incalculable injury.

Your committee are of opinion, that no considerations of justice or policy, require an injunction in this case, and that another mode of redress may be given to the grantees, affording them all the satisfaction they can reasonably desire, and less penal and injurious to the other party.

Your committee therefore recommend, that the act of 1811, be repealed so far as the same relates to the forfeitures and the time when it shall be deemed to have accrued, and as to the granting an injunction as therein mentioned.

And that an act be passed, declaring, that if any forfeiture of any boat, &c. shall take place as mentioned in the act of 1808, the grantees may sue for and recover the same, together with such damages as they may have sustained by the navigating such boats, by action of detinue or trover, in the proper court having jurisdiction thereof, wherein the defendant may be held to bail in such an amount as one of the judges of the said court may direct, upon affidavits exhibited to him. And that the chancellor may, moreover, in his discretion, upon the application of the plaintiff, issue an injunction, prohibiting the said boats from navigating the waters of this state, until the defendant shall give such reasonable security to the plaintiffs, as the chancellor or one of the judges of the court where the action is brought shall approve, that such boats, &c. shall be forth coming, to be delivered up to the plaintiffs, in case they shall finally prevail in such



suit, and upon producing the judge's certificate that such security has been given, the said injunction shall be dissolved, and the boats, &c. restored to the defendants, and that no injunction shall issue to prohibit steam boats from navigating the waters of this state, except of the nature, and in the case aforesaid.

And your committee ask for leave to present a bill embracing the above provisions.

NATHL. PITCHER, *Chairman.*

R.

IN ASSEMBLY—JANUARY 27, 1817.

*An act concerning Steam Boats.*

I. *Be it enacted by the People of the State of New-York, represented in Senate and Assembly,* That the act, entitled "an act for the more effectual enforcement of the provisions contained in an act, entitled "an act for the further encouragement of Steam Boats on the waters of this State, and for other purposes," be and the same is hereby repealed.

II. *And be it further enacted,* That the forfeiture to Robert R. Livingston and Robert Fulton and their associates, of the Boat or Boats and Vessels, together with the engine, tackle and apparel thereof, mentioned in the second section of the act, entitled "an act for the further encouragement of Steam Boats on the waters of this State, and for other purposes," passed the 11th day of April, 1808, may be sued for and recovered, together with damages for the detention thereof, by action of detinue, in the proper Court having jurisdiction thereof, wherein the defendant or defendants may be held to bail in such sum as one of the Judges of the said Court in his discretion may think proper to order : And also, that upon a bill for that purpose in the Court of Chancery, the Chancellor may, if he thinks proper, order an injunction to issue, to be directed to the defendant or defendants, their agents and attorneys, prohibiting them from navigating with, or employing the said Boat or Boats and Vessels, with the said engines, tackle and apparel, or removing the same, or any part thereof, out of the jurisdiction of this State, until the said defendant or defendants shall have given such security to the plaintiff or plaintiffs, by bond, with one or more surety or sureties, and in such sum as one of the Judges of the said Court wherein the said suit is brought shall approve, that in case the plaintiff or plaintiffs shall finally prevail in



the said suit, the said Boat or Boats and Vessels, with their engines, tackle and apparel, shall be delivered up. and put into the possession of the plaintiff or plaintiffs, within such time as the said Court wherein the said trial is had, may finally order and direct, (loss by inevitable accident only excepted,) and upon such security being given and upon a certificate thereof by the Judge before whom the same shall be taken, such injunction is, and shall be considered as thenceforth dissolved : And the bond so to be taken, shall be filed or deposited in the office of the Clerk where the said suit shall have been commenced, and may be delivered to the obligees therein mentioned, after a final judgment, by rule or order of the said Court, upon notice and hearing as justice may require.

## S

IN ASSEMBLY—MARCH 5, 1817.

*To the Honourable the Senate and the House of Assembly of the State of New-York.*

The Petition of JOHN L. SULLIVAN, of Boston, HUMBLY SHEWETH—

That he is a patentee, under the laws of the United States, of a valuable improvement in inland navigation, called the Steam Tow-Boat ; which is the application of steam engine power to the new and useful purpose of towing loaded Boats. or Vessels, on rivers and canals, passing through the locks thereof ; also, of improvements for the navigation of sea Vessels by Steam.

That the laws of the United States, founded on express provisions of the Constitution, hold out encouragement and protection, by letters patent, for inventions and discoveries. That so encouraged, your petitioner made experiments, necessarily very expensive, with a view to adapt Steam Engine power to inland navigation, in the manner aforesaid ; and has made great improvements also in the simplification and economy of Steam Engines for this purpose, for which he also has patents.

That having succeeded in the object of his experiments, reduced his improvements to practice, and made the discovery of a great saving of power in the effect on a succession of Boats, by the broken water or wake thereof—he applied for a patent in the year 1813, but was informed from the Department of State, that the late Robert Fulton, deceased, had applied for the same thing, and that the question of right to a patent, between him and your pe-



tioner, must be decided by arbitration, as provided by law when conflicting claims arise. Accordingly the Secretary of State appointed the Honourable James Hillhouse, of New-Haven, (many years a Senator in Congress) on the part of the Government; Eli Whitney, Esq. of New-Haven, (well known as an able mechanician) was chosen by Mr. Fulton; and Theodore Dwight, Esq. a distinguished lawyer, resident at Hartford, where the meeting was appointed to take place, was chosen by your petitioner.

After a thorough investigation, with the aid of Counsel on both sides, the arbitrators unanimously decided in favour of your petitioner. Whereupon the President of the United States did issue Letters Patent to him, for his invention of the Steam Tow-Boat, bearing date the 2d of April, 1814.

Your petitioner, in alluding to the controversy thus settled between him and the late Mr. Fulton in order to shew his established right to a patent, and therefore that he should not be excluded from the use thereof, in any part of our country, by him or his successors, does by no means presume or intend to derogate from the reputation and the respect due to the memory, and the merits, of that very useful, ingenious and enterprising man. But your petitioner claims only his own rights, and humbly represents, as a citizen of the United States, and a patentee according to the Constitution and laws, that he is prevented and precluded from the use of his patent, within the State of New-York, by certain grants or acts of the Honourable Legislature, in favour of Robert R. Livingston and Robert Fulton, passed on the 11th day of April, 1808, and the 9th of April, 1811, when, as your petitioner is informed, and verily believes, the subject of Steam Engine power was but partially understood, and supposed to be applicable only to passage Boats—and not supposed to be practicable in any other manner, or useful to inland navigation.

That the said acts of the Legislature were therefore expressed in terms the most comprehensive and general, including not merely their passage-boats, the only thing they had brought into use, but every improvement that human ingenuity could devise in this line of pursuit; thus giving to the said Robert R. Livingston and Robert Fulton, and their successors for a great length of time, the immeasurable privilege of excluding every thing of this nature from use within this State; so that, by the operation of said laws, the good people of the State, and the patentee of the United



States, must purchase of them the privilege of using improvements and facilities that the grantees never invented, nor can have any right to use themselves. Your petitioner is convinced it was not the meaning and intention of the Legislature, to grant a privilege of this extent and nature to the prejudice of public accommodation, and injurious to those who rely on the laws of Congress: a privilege evidently not expected originally by the grantees themselves, ever to belong to them.

Moreover, by the said acts of the Legislature, powers of self protection are given to the said Robert R. Livingston and Robert Fulton, and their assigns and successors, whether citizens or aliens, which in effect deprive all who may, in their opinion, encroach on their said comprehensive grant, from the benefits of a Judicial investigation, in the tribunals of their country, on equal terms.

That this extraordinary power and exemption from the common course of law, never before granted to a private man by any free and equal government—though acknowledged to be proper and constitutional when limited to defence against persons who, without any pretensions to invention or discovery, would avail themselves of others experiments, becomes peculiarly oppressive and injurious when operating against your petitioner, as a patentee of inventions and discoveries essentially different from their object, and of a far more useful character.

Your petitioner represents also, that the authority given to them by the first mentioned act, to seize and destroy Boats or Vessels, however valuable, as forfeited to them by virtue thereof, puts an effectual barrier to all enterprize in this line; and deprives the interior of the State, as well as the sea ports, of one of the most powerful auxiliaries to public economy and general prosperity. So that it becomes, in fact, an object of *public concernment*, as well as of interest to your petitioner and his numerous associates in the city and country, and along the waters of the State, that improvements which are calculated to yield great benefits, as is demonstrable from experience, *should not be lost to the community*, with others that may spring up like them; by means of these adventitious powers thus given, probably without intention, to a certain few individuals, because the successful introducers of Steam Boats, already known in practice by others, though not perseveringly put in operation.



Your petitioner, after incurring much expense, and bestowing much time on the object, cannot but feel most sensibly his exclusion from the most important and improving section of his country, the State of New-York, where the benefits of his improvements, inventions and discoveries, might be most extensively beneficial. But the State of New-York is pre-occupied exclusively and shut against him; and so far as relates to the Patent Laws of Congress, on this subject, in effect withdrawn from the Union.

Your petitioner therefore prays, that the Honourable Legislature will advert to the spirit and original intention of the said acts or grants, and provide for him and for the public, such adequate and speedy remedy and relief, as to their wisdom may seem meet and proper; leaving to the said grantees, all the rights and privileges to which they are legally entitled.

And as in duty bound will ever pray.

### T

IN ASSEMBLY—MARCH 7, 1817.

*Report of the Committee on the Petition of John L. Sullivan.*

The Committee to whom was referred the Petition of John L. Sullivan, REPORT—

That the Petitioner is a Patentee of an improvement in inland navigation, called the Steam Tow-Boat. The right of the Petitioner was contested by the late Robert Fulton, and the Patent did not issue until the claims and pretensions of the parties had been submitted to arbitrament, under the act of Congress, and unanimously awarded to the Petitioner. Mr. Fulton did not claim the improvement under his patents for Steam navigation, but relied on his being entitled to a patent as the inventor or discoverer of Steam Tow-Boats, and for which patent he contended he had made a prior application. The priority of discovery was the question submitted to the arbitrators, and awarded to the Petitioner.

Your Committee refrain from going at large into the various questions that arise under the Constitution, Laws, and Patents of the United States, on the one hand, and the Grants of this State to Robert R. Livingston and Robert Fulton, and the Laws guarding those Grants with penalties, on the other. A clear and comprehensive view of those subjects will be found upon the Journals of this House, in the Report of the Committee upon the Petition



of Aaron Ogden, in 1814, and in the Report of the Committee of this House upon the Petition of Joseph Hawkins, at the present Session.

The Petitioner claims a right to use his Steam Tow-Boat upon any and all the waters of the United States. The Representatives of Messrs. Livingston and Fulton allege, that by the Laws of this State in their favour, he is precluded from the use of the waters of this State—and those conflicting claims, the one arising under the Constitution and Laws of the National Government, the other founded on the Laws of this State, cannot both stand: One must yield, and in the opinion of your Committee, these parties ought to be permitted to carry this question to the Courts of the United States, upon equal grounds; and that the Petitioner have leave to present a Bill for his relief, unless the Bill now committed to the Committee of the whole House shall embrace adequate provisions for that purpose.

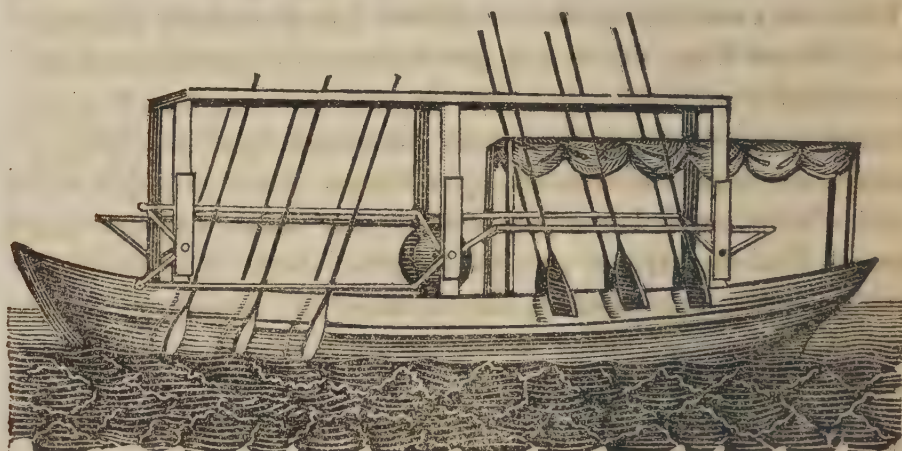
All which is respectfully submitted.

By order of the Committee,

E. WILLIAMS, *Chairman.*

V

*Plan and description of Mr. Fitch's Steam Boat, from the Columbian Magazine for December, 1786.*



It is to be propelled through the water by the force of Steam; the Steam Engine is to be similar to the late improved Steam Engine in Europe, those alterations excepted; the cylinder is to be horizontal, and the Steam to work with equal force at each end thereof. The mode of forming a vacuum is believed to be en-



tirely new, also of letting the water into it, and throwing it off against the atmosphere, without any friction. The undertakers are also of opinion, that their Engine will work with equal force to those late improved Engines, it being a twelve inch cylinder; they expect it will move with a clear force, after deducting the friction, of between eleven and twelve hundred pounds weight; which force is to be applied to the turning of an axle-tree on a wheel of eighteen inches diameter. The piston is to move about three feet, and each vibration of the piston turns the axle-tree about two thirds round. They propose to make the piston to strike thirty strokes in a minute, which will give the axle-tree about forty revolutions. Each revolution of the axle-tree moves twelve oars five and a half feet; as six oars come out of the water, six more enter the water, which make a stroke of about eleven feet each revolution. The oars work perpendicular, and make a stroke similar to the paddle of a canoe. The cranks of the axle-tree act upon the oar about one third of their length from this lower end, on which part of the oar the whole force of the axle-tree is applied. The Engine is placed in about the third's of the boat, and both the action and re-action of the piston operate to turn the axle-tree the same way.



These may certify, that the subscriber has frequently seen Mr. Fitch's Steam Boat, which with great labour and perseverance he has at length completed; and has likewise been on board when the boat was worked against both wind and tide, with a very considerable degree of velocity, by the force of Steam only.

Mr. Fitch's merit in constructing a good Steam Engine, and applying it to so useful a purpose, will no doubt meet with the encouragement he so justly deserves, from the generosity of his countrymen, especially those who wish to promote every improvement of the useful arts in America.

DAVID RITTENHOUSE.

*Philadelphia, Dec. 12, 1787.*

Having also seen the Boat urged by the force of Steam, and having been on board of it when in motion, I concur in the above opinion of Mr. Fitch's merits.

JOHN EWING.



From the well known force of Steam, I was one of the first of those who encouraged Mr. Fitch to reduce his theory of a Steam Boat to practice, in which he has succeeded far beyond my expectations.

I am now fully of opinion, that Steam Boats may be made to answer valuable purposes in facilitating the internal navigation of the United States ; and that Mr. Fitch has great merit in applying a Steam Engine to so valuable a purpose, and entitled to every encouragement from his country and countrymen.

ANDREW ELLICOTT.

*Philadelphia, Dec. 13th, 1787.*

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In a pamphlet published shortly after the "attack" apprehended by Col. Ogden, had actually been made, it is stated that the evidence adduced before the Legislature of New-Jersey, "clearly established the originality of this invention to be due to Fitch. The testimony of Mr. Ewing, Capt. Declyn, Mr. Wilson, and Nathan Wright, concurred with the original journal of Mr. Fitch ; by which it was made clear to the House, that this great though eccentric man, had discovered the practicability of applying the force of Steam, by means of the Steam Engine, to the propelling of Boats, and had actually navigated a boat on this principle, at various times between the years 1786 and 1790, up and down the Delaware ; and had at one time, as appeared by the deposition of Nathan Wright, attained in sailing to the celerity of EIGHT miles an hour. That the original journal, the genuineness of which was positively shewn, clearly proved that in the year 1790, in the months of April, May, and June, various experiments had been made with this Boat, which public characters had been invited to see, and had borne ample testimony of the excellent manner in which the Steam Engine worked. That no boat could hold way with it, and that it frequently worked in rough weather. That on the 5th of June, A. D. 1790, he invited the Council on board, and had an agreeable run from Burlington to Philadelphia ; and that Mr. Wilson, one of the firm of Brook and Wilson, who built Mr. Fitch's first boat, expressly testified, that he had gone in one of his boats from Philadelphia to Burlington in less than *three hours*. It appears," it is added, "that this wonderful man, under the most discouraging



“ circumstances, arising from want of capital, and the low state of  
“ Mechanical Arts at that time, yet never despaired of final suc-  
“ cess ; and it is in evidence that he frequently declared, in almost  
“ prophetic language, that although he might fail through want  
“ of funds, yet somebody would hereafter rise up, who, with suf-  
“ ficient capital, would carry his scheme into effect, and produce  
“ the greatest benefits to mankind, by a practical use of the Steam  
“ Engine for navigating *Ships of War for defence*, and of Boats  
“ for river navigation.” *Vide* “ A HISTORY OF THE STEAM BOAT  
“ CASE,” Trenton, 1815.

These statements have been two years before the public, in  
print. Have they ever been contradicted ?

FINIS.



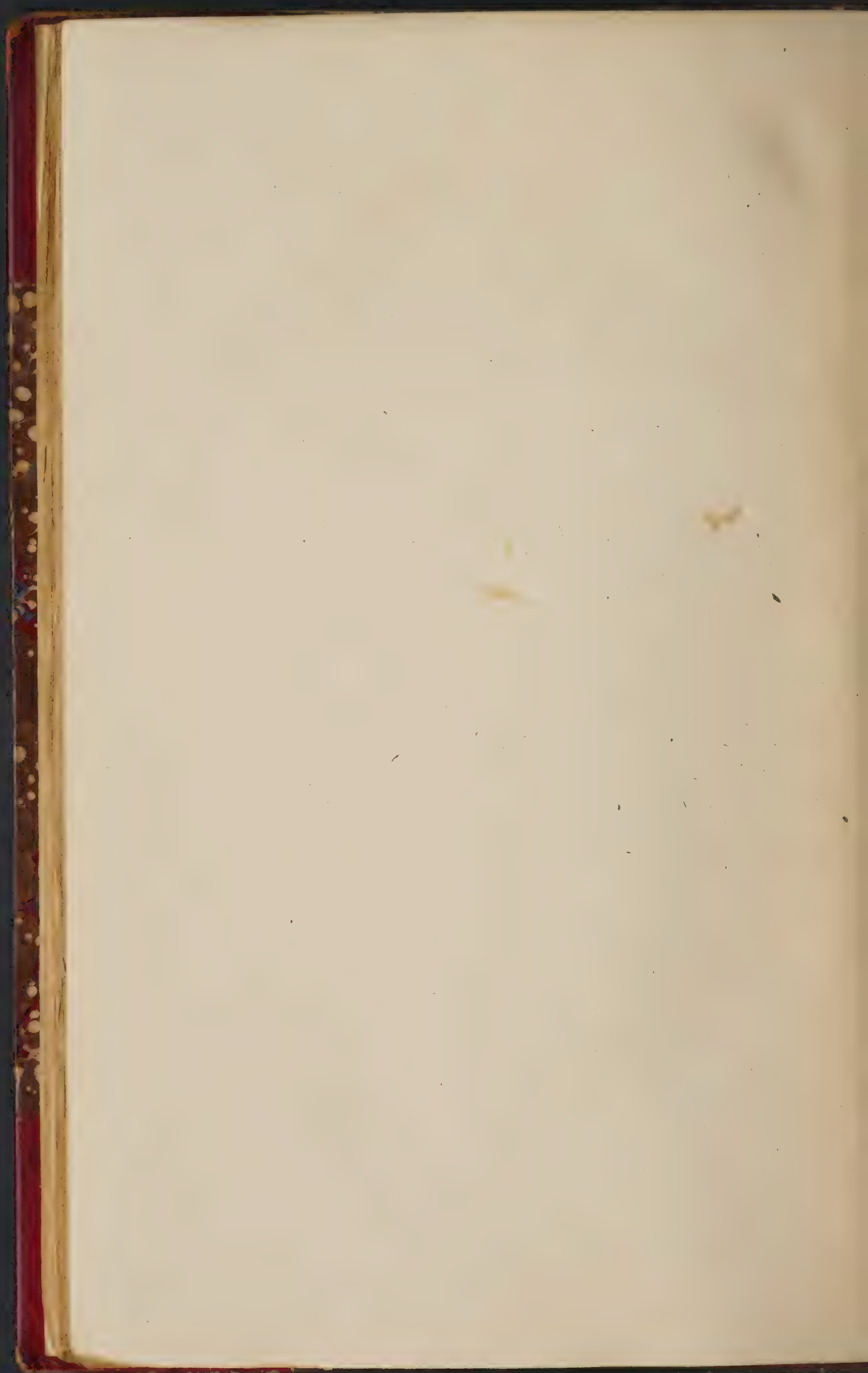
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